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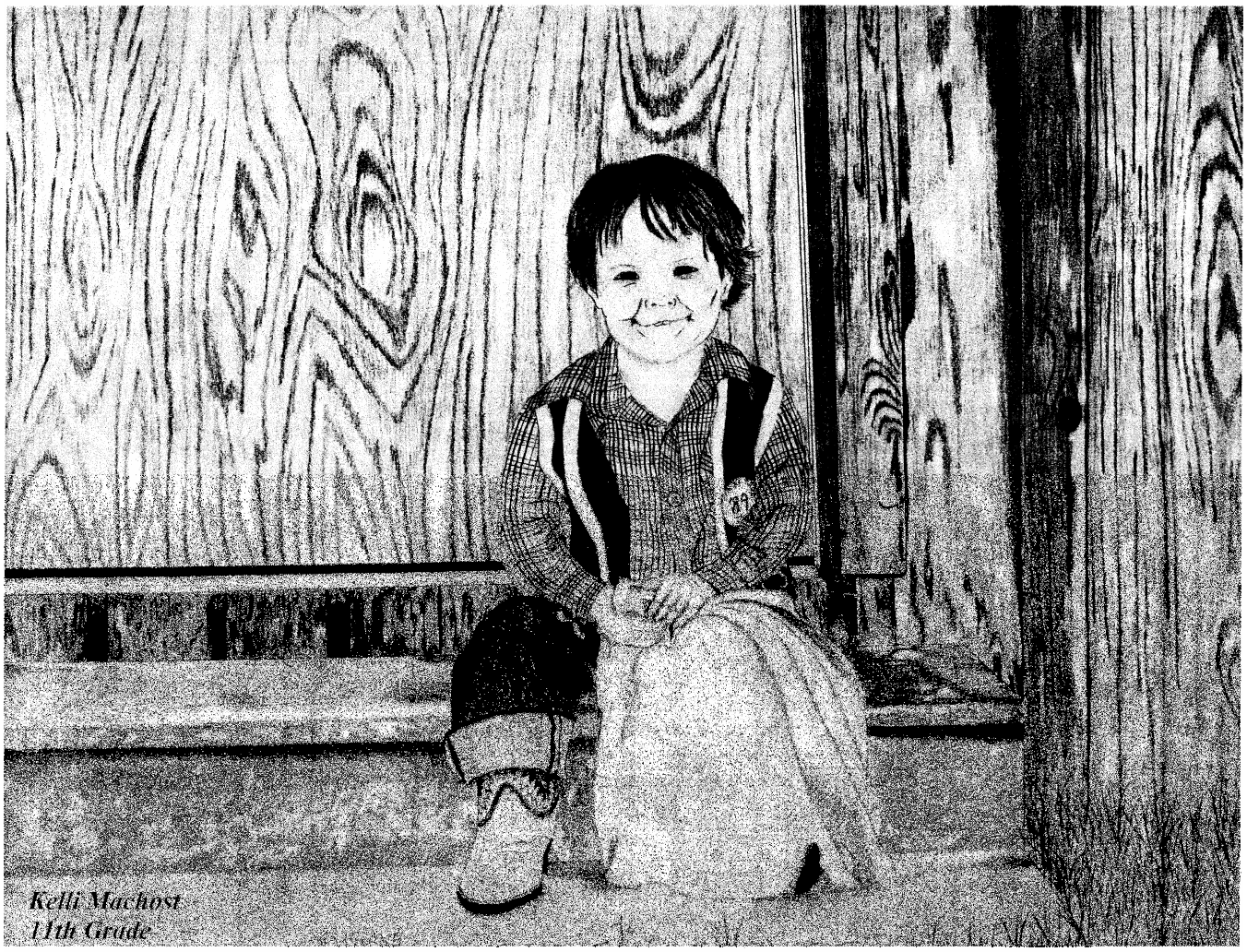

Kelli Machost
11th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0494-GA

Requestor:

The Honorable Florence Shapiro

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Requestor:

The Honorable Mike Jackson

Chair, Committee on Nominations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Meaning of the Occupations Code requirement that a chiropractic licensing exam applicant present proof that the applicant "has completed 90 semester hours of college courses at a school other than a chiropractic school"; scope of the Board of Chiropractic Examiner's authority with respect to the requirement (Request No. 0494-GA)

Briefs requested by July 17, 2006

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200603629
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: July 6, 2006

♦ ♦ ♦

Request for Opinions

RQ-0501-GA

Requestor:

The Honorable David Swinford

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Criminal provisions applicable when a physician fails to comply with section 164.052(a)(18) of the Occupations Code, which restricts third-trimester abortions, and section 164.052(a)(19) thereof, which requires parental consent for abortion performed on unemancipated minors (Request No. 0501-GA)

Briefs requested by August 7, 2006

RQ-0502-GA

Requestor:

Mr. Mike Geeslin

Commissioner of Insurance

Texas Department of Insurance

Post Office Box 149104

Austin, Texas 78714-9104

Re: Whether the Department of Insurance may disclose the identity of insurers writing residential or commercial property insurance along the Texas coast (Request No. 0502-GA)

Briefs requested by August 7, 2006

RQ-0503-GA

Requestor:

The Honorable Jim Pitts

Chair, Committee on Appropriations

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether section 11.168, Education Code, prohibits a municipality from imposing impact fees on a school district to help fund additional infrastructure made necessary by proposed new school district facilities (Request No. 0503-GA)

Briefs requested by August 7, 2006

RQ-0504-GA

Requestor:

The Honorable Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Whether a commissioners court may delegate non-statutorily assigned duties (Request No. 0504-GA)

Briefs requested by August 7, 2006

RQ-0505-GA

Requestor:

The Honorable Carlos Valdez

105th Judicial District Attorney

Nueces County Courthouse

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Whether a group of local officials denominated the "Jail Population Control Committee" is subject to the Open Meetings Act, chapter 551, Government Code (Request No. 0505-GA)

Briefs requested by August 10, 2006

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200603702
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: July 12, 2006

♦ ♦ ♦

Opinions

Opinion No. GA-0442

The Honorable John S. Holleman

Polk County Criminal District Attorney

Post Office Box 1717

Livingston, Texas 77351

Re: Whether a county auditor who violates Local Government Code section 84.007(b)(2) has committed "official misconduct" and whether a violation of section 84.007(b)(2) can be cured retroactively (RQ-0420-GA)

S U M M A R Y

A county auditor who has a personal interest in a county contract in violation of Local Government Code section 84.007(b)(2) may have committed "official misconduct" as this term is used in Local Government Code section 84.009, which provides for a county auditor's removal under certain circumstances. Whether a county auditor has committed official misconduct is for the district judges who appointed the county auditor to decide in the first instance. It is also within the district judges' discretion whether to proceed with removal

No law permits a county auditor to cure a violation of section 84.007(b)(2) through the auditor's subsequent action. Thus, a county auditor may not cure a violation of Local Government Code section 84.007(b)(2) by divesting himself of his interest in the county contract subsequent to the oath's violation.

Opinion No. GA-0443

Ms. Valeri Stiers Malone, Presiding Officer

Manufactured Housing Board

Texas Department of Housing and Community Affairs

Post Office Box 12489

Austin, Texas 78711-2489

Re: Whether a taxing unit has a tax lien on a manufactured home physically located in the unit's jurisdiction on January 1 of the tax year, regardless of how ownership is reflected on the records of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs; whether a tax lien must be filed with the Manufactured Housing Division to be enforceable against a manufactured home that has been properly designated as real property (RQ-0431-GA)

S U M M A R Y

A tax lien for taxes owed on a manufactured home attaches to the specific manufactured home and a taxing unit may perfect a tax lien on the home by filing a notice of the lien with the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "MHD") not later than six months after the end of the year for which the tax is owed, even though the notice may reflect the name of the prior owner rather than the current owner as shown by the MHD's records. Notice of a tax lien on a manufactured home properly designated as real property need not be filed with the MHD to be enforceable.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200603705
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: July 12, 2006

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.95, §3.97

The Railroad Commission of Texas withdraws its proposal to amend §3.95, relating to Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations, and §3.97, relating to Underground Storage of Gas in Salt Formations, published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1138) and proposes revised new amendments to §3.95, relating to Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations, and §3.97, relating to Underground Storage of Gas in Salt Formations. Consistent with the Commission's wish to further the goals of safety and the prevention and control of pollution, the Commission proposes the amendments in order to reduce the possibility of explosion and fire at such facilities and enhance the safety of such facilities in light of the gas release and fire at the Moss Bluff Hub Partners, LP natural gas storage facility and incidents at several liquid hydrocarbon storage facilities.

On August 19, 2004, a gas release and fire occurred at the Moss Bluff Hub Partners Hydrocarbon Storage facility in Liberty County, Texas. The incident occurred during "de-brining," when brine was being extracted from the cavern through tubing at the same time as gas was injected into the cavern through casing. Investigation revealed that the likely initiating event at Moss Bluff was a separation of the brine tubing at or above 3,724 feet below the ground surface within the gas-bearing area of the storage cavern. Gas entered the brine tubing, reached the surface, and flowed into the above-ground brine piping. The emergency shutdown valve on the above-ground brine piping appeared to have operated properly, because investigators recovered it in the closed state. The evidence suggests that transient mechanical forces, or "water hammer," produced by the sudden pressure surge caused the surface piping to fracture between the wellhead and the emergency shutdown valve. The break occurred at a location in the piping that had experienced wall loss due to internal corrosion. This break in the above-ground brine piping initially fueled the fire. The geometry of the surface piping directed gas and fire downward at the base of the wellhead, weakening the assembly that attached the wellhead to the casing. Eventually the entire wellhead assembly separated from the casings and was ejected to the side and gas began escaping vertically through the production casing. The fire self-extinguished for approximately 28 seconds before reigniting.

Investigation of this incident revealed unexpectedly extensive internal corrosion of the brine piping. This piping was transferred from service on another storage well, installed, and successfully pressure tested in 2000. Past experience had not indicated corrosion to be a problem. Inspection and testing of such piping is not a requirement under the current provisions of §§3.95 and 3.97.

Two other incidents resulted in the surface release of stored liquefied petroleum gas (LPG) in 2000 and crude oil in 2005 at underground liquid hydrocarbon storage facilities in Texas. These incidents were associated with the remote location of an emergency shutdown valve from the wellhead (crude oil release) and water hammer-induced pressure transient rupture of the surface piping nipple (LPG release).

After considering the findings of the investigation of these incidents, the Commission determined that new safety requirements were necessary and, on December 7, 2004, directed staff to initiate rulemaking to establish such requirements. In January 2005, staff sent a questionnaire to all operators of underground hydrocarbon storage facilities to gather additional information concerning the current status of construction, maintenance, operations, and record keeping. In addition, in May 2005, staff held a workshop to review operator responses from the questionnaire and to gather input from affected operators to evaluate the advisability, cost, and effectiveness of potential new safety regulations. The Commission also published on its website a draft of the proposed amendments for informal comment. Staff used the input from these forums to draft the original proposed amendments and incorporate new requirements for integrity management of surface piping, location of emergency shutdown valves, fire suppression capabilities, data acquisition, and record retention.

On February 24, 2006, the Commission published the original proposed amendments to §3.95 and §3.97 (Statewide Rules 95 and 97) in the *Texas Register* for a 30-day comment period. Two associations and seven companies submitted comments. The Commission has incorporated substantive changes as a result of the comments, and therefore republishes the proposed amendments for a second 30-day comment period. With this new proposal, the Commission provides responses to the initial comments to explain the basis for the revised proposed amendments to §§3.95 and 3.97. Because this is a new proposal, however, these responses are not the Commission's final position on these issues. The Commission invites and will fully consider comments on all matters in this proposal.

An industry association recommended changes to the definition for "storage wellhead" in §3.95(a)(16) and §3.97(a)(12) to include the statement "The storage wellhead must be designed to contain the contents of the storage well and protect against mechanical damage and transient pressure by: (1) limiting spool

pieces inside the emergency shutdown valve to a length less than six feet, (2) designing all spool and piping anchors to prevent piping failure due to 'water hammer' and minimize all spool lengths, or (3) design emergency shutdown valves to prevent creating a transient pressure surge in the wellhead piping."

The Commission agrees that an additional description of storage wellhead performance standards will be helpful, but has not added this performance standard to the definition for "storage wellhead" for two reasons. First, a definition is not the preferred place to impose a performance standard. Second, the suggested standards emphasize protection only against transient pressure. Consequently, instead of changing the definition of "storage wellhead," the Commission added some of the suggested language into proposed new §3.95(h)(2)(A) which states the performance standard for a storage wellhead, and emphasizes protection against all sorts of pressure. The Commission made a parallel addition to §3.97(h)(2)(A).

An integrated oil company questioned the need to add the phrase "exclusive of tubing and casing" to the definition of surface piping at §3.95(a)(17) and §3.97(a)(13). The Commission agrees that the added language is of limited usefulness and has deleted the phrase in the new proposal.

A storage operator interpreted the definition of surface piping at §3.95(a)(17) to include all product, brine, and freshwater piping in a facility that connects to a storage well. This comment suggested clarifying and strengthening the proposed changes by individually defining the types of surface piping and crafting individualized requirements for each. The requested clarification has not been made at this time, because the various types of surface piping are already described in sufficient detail with unique sets of requirements.

A pipeline association requested clarification that fusible links would satisfy the requirement of the definition of leak or fire detectors at §3.97(a)(7). The proposal has not been changed in response to this comment due to concerns about clarity. Specifically identifying fusible links as an appropriate type of fire detector without listing any other types of fire detectors would be potentially confusing; it might lead to the erroneous conclusion that only the listed types of fire detectors meet the requirements of the rule. That might stifle technical innovation for new types of detectors.

A pipeline association stated that the definition of surface piping at §3.97(a)(13) needs additional wording to denote that the end of surface piping would be at the first point of pressure regulation downstream of the wellhead. Such wording would help to identify the boundary between the respective areas of administrative authority of the Oil and Gas Division and the Safety Division. A storage company filed a similar comment regarding language in section §3.97(h)(3)(A). The Commission agrees with the suggestion as it applies to product piping. Because the Safety Division only has administrative authority over piping that transports hazardous materials, however, such a boundary has not been applied to fresh water or brine surface piping under any operating conditions. The Commission has clarified in the new proposal for §3.95(h)(3)(A) that only some hydrocarbon storage facilities are under the administrative authority of the Safety Division.

A pipeline company and a storage company recommended that the wording in §3.97(h)(2)(B) and §3.95(h)(2)(B), respectively, allowing an operator to come into compliance with the requirements on the location of emergency shutdown valves within three years or in conjunction with the next scheduled mechanical integrity test should be reworded to *require* the operator to comply with the later deadline. The requested change has not been made at this time. However, the proposal has been modified to provide additional clarity. The language of the original proposal was intended to provide an operator with the flexibility to choose the most appropriate alternative. Requiring an operator to comply with the later deadline may not be the most efficient option for an operator. In many cases, an operator gains operational flexibility by choosing the earlier deadline if it coincides with a mechanical integrity test for which the cavern is emptied, because the wellhead may be in a more favorable operational status for a workover. To further increase the clarity, however, the Commission proposes to modify the wording in proposed new §3.95(h)(2)(B) and §3.97(h)(2)(B) as follows: "Either within three years of the effective date of this section, or in conjunction with the next integrity test of the storage well . . . "

A pipeline company identified an incorrect reference in §3.97(h)(2)(C) as originally proposed. The addition of a proposed new subparagraph (A) obviates the need to correct the reference.

A chemical company agreed that all surface piping should be designed for gas pressure on the gas side and maximum brine pressure on the brine side. This comment stated that the failure of one company to maintain surface piping under §3.95(h)(3) should not mean that other facilities do not. This comment also stated that the requirement to locate the emergency shutdown valve on the wellhead before surface piping is not necessary. The chemical company further stated that with proper integrity management testing, there should not be a six foot limit on spool pieces. The Commission notes that integrity management (including testing) is but one element of safe storage well operations. On the basis of systematic process re-engineering, many operators have concluded that the safest location for the emergency shutdown valves is on or immediately adjacent to the storage wellhead.

A gas company commented that the proposed language in §3.97(h)(3)(A) should be revised to eliminate potential conflict with pipeline safety rules. The Pipeline Safety Regulations, found at 16 Texas Administrative Code Chapter 8 and administered by Safety Division, currently establish the maximum allowable operating pressure of gas piping within a storage facility. The comment suggested that the rule should be modified to limit the surface piping subject to this section to that piping between the wellhead and the first downstream pressure-regulating device. The Commission agrees with the suggestion as it applies to product piping. Such a boundary would apply only to product piping that transports hazardous materials and thus is under the administrative authority of the Safety Division.

A pipeline association stated that the language proposed in §3.97(h)(3) is appropriate only if the definition for surface piping is amended to include additional wording to denote the end of surface piping would be at the first point of pressure regulation downstream of the wellhead. Such wording would help to identify the boundary between the respective administrative authorities of the Oil and Gas Division and the Safety Division. The Commission agrees with the suggestion as it applies to product piping. Such a boundary would apply only to product piping that transports hazardous materials and thus is under the administrative authority of the Safety Division. The Commission proposes language in §3.97(h)(3) to limit the requirement to product or gas surface piping that extends from the wellhead

emergency shutdown valve to the first pressure regulation device.

A storage company commented that the language originally proposed in §3.95(h)(3)(B) requiring brine surface piping to be designed for maximum brine wellhead pressure and to transport gas and brine under emergency conditions to the brine system gas vapor control system is too broad. The storage company suggested adding "maximum brine operating pressure that can occur when the emergency shutdown valve actuates" for clarification. The storage company also stated that the transport section should be clarified to include the fact that different pressure standards would be applied to different portions of the brine system, depending on the service conditions to which the piping and equipment will be subjected. The suggested change has not been included in the proposal. Brine piping must be designed to function properly and transport the product and brine mixture downstream to safety devices such as a vapor knockout vessel or a flare in multiple situations, including both where the emergency shutdown valve closes properly and where the emergency shutdown valve is closing slowly or improperly. The safety devices (such as a vapor knockout vessel or flares) currently mandated by §3.95(h)(6) already address safe management of product if the surface brine piping maintains integrity in an emergency situation. However, these safety devices will not be effective if the brine piping were to fail to transport the flammable vapor to the appropriate devices.

The chemical company's proposed language for §3.95(h)(3)(B) requiring brine surface piping to be designed for maximum brine wellhead pressure and to transport gas and brine under emergency conditions to the brine system gas vapor control system would be more effective with Commission approved alternatives. The chemical company proposed additional language for the brine surface piping requirement to allow an exception for equally protective alternatives approved by the Commission. The chemical company described the dual emergency shutdown valve system in operation at its facilities in Texas and around the world as an example of an alternative that would be equally protective. The Commission agrees with the suggested language and has inserted the language in the new proposal for §3.95(h)(3)(B)(i). Installation of secondary emergency shutdown valves on the brine piping would significantly add to the safety of the brine system. Emergency shutdown valves are very reliable, and there is a low probability of the failure of such valves. If operators installed dual emergency shutdown valves on the brine line, the probability of simultaneous failure of both emergency shutdown valves becomes very remote.

An operator of a storage facility and a gas company commented that the language in §3.95(h)(3)(C) should exempt small diameter freshwater supply lines to a storage wellhead because their small diameter would prevent water hammer pressure transients from affecting the piping and emergency shutdown valve. The storage operator questioned the need to impose six foot spool length limit on small diameter piping. The Commission agrees with exempting small diameter fresh water piping from the six-foot spool length limit, but only under certain circumstances. Fresh water surface piping is already exempted from the requirement to install an emergency shutdown valve under conditions identified in §3.95(h)(3)(C). The Commission proposes to allow fresh water piping to be exempted from the six foot spool length limit if fresh water piping is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well and has a maximum internal diameter of two inches or less, and an attendant is posted at the well site to provide manual shut-in when in use.

A chemical company agreed with the fire suppression requirement in §3.95(h)(7); the Commission appreciates the comment.

An association of oil and gas operators recommended adding language to §3.95(h)(7)(C) to identify the purpose of the fire suppression requirement. This association suggested adding to "fire suppression capability" the qualifier "designed to aid in personnel rescue and for equipment protection and cooling." The association also recommended allowing an exception when equipment and buildings that need protection and cooling are located at great distance from the wellheads, for example, approximately 1,000 ft. The Commission concurs with the suggestion to add clarifying language for the performance standard for the fire suppression capability. The association's suggested fire suppression exemption for storage wells located at large distances from other wells or control facilities, however, has not been incorporated into the proposal due to worker safety concerns. An operator may request an exemption under §3.95(h)(7)(C). A great distance between storage wells and control facilities would be taken into account as a mitigating factor in considering whether to grant such a request.

A gas company and a pipeline association commented that the language originally proposed in §3.97(h)(11) requiring fire suppression capability for wellheads and compression stations is unclear because of the lack of sufficient design criteria to allow an operator to know if it has satisfied the regulation. The proposal has not been changed in response to this comment. Adding the qualifying language "designed to aid in personnel rescue and for equipment protection and cooling" adds sufficient clarity in describing the expected performance standard.

An association of oil and gas operators commented that the fire suppression requirement in §3.97(h)(11) for natural gas storage wellheads is unrealistic because events such as the complete loss of wellhead control are beyond the ability of standard fire-fighting equipment to address. This association stated that duplication of the wellhead emergency shutdown valve is preferable to fire suppression capability. The Commission agrees that the example cited by the association--a fire characterized by the complete loss of wellhead control--is largely beyond the ability of standard fire-fighting equipment to address. However, such a fire is extremely rare. Smaller fires are more common, and the clarifying language proposed by the gas company and the association would address fire safety issues associated with the most common types of fires.

A gas company and a pipeline association commented that the new requirements originally proposed in §3.97(h)(5)(A) to require leak or fire detectors at each structurally enclosed compressor sites are unnecessary because the existing pipeline safety regulations found at 16 Texas Administrative Code Chapter 8 and administered and enforced by the Safety Division, already require gas detectors at such locations. The Commission notes that the current rule requires heat and fire detectors at each wellhead and each structurally enclosed compressor site, but only for facilities within 100 yards of public areas. It is appropriate to require heat and fire detectors at each wellhead and each structurally enclosed compressor site for all facilities based on the extensive fire damage associated with the wellhead failure of a gas storage well. It is also appropriate to retain the requirement for leak and fire detectors at the wellhead and the requirement for detectors at structurally enclosed compressor sites. Although the rules in Chapter 8 also require

fire detectors at structurally enclosed compressor sites, such a requirement is not in conflict and not all storage facilities are under the administrative authority of the Safety Division.

An integrated oil company, a gas company, and a pipeline association commented that the requirement in §3.95(h)(9)(B) and §3.97(h)(8)(B) to notify the Commission of the root cause of an emergency incident within 30 days may not be achievable in every instance. The integrated oil company suggested adding wording to allow an extension of the deadline, if the situation warrants. The gas company and the pipeline association suggested a 90-day period to submit a supplemental report on the root cause and the operational changes, if any, that would be implemented. The Commission agrees that in some instances, it may not be possible to understand the root cause of an incident within 30 days. The Commission proposes to add language allowing, for good cause, a 30-day extension to the time required to file a report on the root cause of an emergency incident.

An association of oil and gas operators stated its concern that the requirement originally proposed in §3.95(h)(16) and §3.97(h)(12) to design, install, test, maintain, and operate equipment in accordance with engineering standards would be difficult to meet because such standards are too numerous to list and of limited value in a post-incident investigation. The association reported that maintenance standards often do not exist and vary depending on the well's service. The association recommended deleting the word "maintained" and adding the following language: "Within one year of the effective date of this section, the operator shall report to the Commission the particular engineering design standards for the wellhead, piping, and major equipment."

A gas company commented that it is uncertain what detail the Commission seeks in the report required by the language originally proposed in §3.95(h)(16). A gas company suggested that providing the engineering standard itself would not be burdensome, but reporting the detailed process may be very burdensome and, in some cases, could violate confidentiality requirements. A gas company suggested that the proposed change be limited to the identification of the engineering standard.

A gas company suggested separating the requirements in §3.97(h)(12) for design, installation, and testing from those for maintenance and operation because design, installation, and initial testing standards are determined at the time the facility is constructed, whereas maintenance and operating standards may change over time.

The Commission concurs with industry's desire to focus the requirement of reporting design standards to wellhead, piping, and valves. In the revised proposal, the Commission has retained the requirement in §3.95(h)(16) and §3.97(h)(12) that operators must design, install, and operate all wellhead, surface piping, and associated valves in accordance with engineering standards to the expected service conditions. The Commission has deleted the originally proposed change to require operators to report the various standards under which equipment is designed, installed, tested, and maintained.

With respect to the operating requirements in §3.95(k)(1) and §3.97(k)(1), an integrated oil company noted that DOT pipeline regulations Part 192 and 195 allow excursions to 110% of maximum allowable operating pressure. The integrated oil company asked if the Commission intends to follow DOT logic and allow pressure excursions above MAOP. The proposal has not been changed to specifically allow excursions to 110% of maximum allowable operating pressure.

A gas company stated that the retention time for records under §3.95(l)(5) is unclear. As originally proposed, the retention period for these operations records was specified in subsection (n)(1) to be three months. The Commission has clarified in subsection (n)(1) and (2) the retention times applicable to specific types of records. Subsection (m) requires the operator to report the maximum wellhead pressures and injected volumes. Currently, the Commission requires these data be reported once a year. These data and data on testing of safety devises are to be retained for five years, which is unchanged from the current rule.

A pipeline association sought to have the language in §3.95(l)(3) specifically allow multi-cavern metering. This suggestion has not been incorporated into the revised proposal because experience has shown that individual well metering provides more accurate information, and language in §3.95(l)(3)(B) specifically allows the Commission to approve alternative methods of monitoring cavern pressures and volumes. The Commission has not received any requests to allow multi-cavern metering since 1998. In reviewing the rule proposal for this comment, it was noted that the proposed provisions of §3.97(l)(3) continued to refer to multi-cavern metering, and that reference is removed so that the revised proposal for §§3.95(l)(3) and 3.97(l)(3) calls for individual well metering for volumes injected and withdrawn.

A gas company strongly supported the reduction of record retention time from five years to three months in §3.95(n)(1). A chemical company disagreed with the three-month requirement for data retention in subsection (n)(1) and stated that retaining records for 30 days is sufficient to perform an inspection after an incident. The proposal has not been changed in response to this comment.

An association of oil and gas operators commented that the proposed requirement for records retention is still too broad. The association recommended that the requirement for life-of-facility retention be limited to major equipment and emergency shutdown valves. The Commission's revised proposal would limit the requirement for life-of-facility retention to those records associated with drilling, completion, workover, repair, and testing of wellheads, surface piping, and associated valves.

A gas company and a pipeline association stated that the proposed language regarding records retention should be revised to separate the retention requirements for drilling, mining, and completion from the retention requirements for inspection, maintenance, and testing. These commenters stated that a five-year retention requirement would be appropriate for inspection, maintenance, and testing. The Commission concurs with the observation that only some records should be retained for the life of the facility and with the suggestion that drilling, mining, completion, workover, and repair data be retained for the life of the facility. However, the proposal has not been changed to reflect the association's suggestion to use an undefined phrase such as "major" equipment in this very important requirement. The Commission's revised proposal, however, does narrow the requirements for life-of-facility records retention to drilling, mining, completion, workover, repair, and testing of wells, and testing of piping and valves.

An integrated oil company commented that the requirement in §3.95(o)(3) and §3.97(o)(3) to pressure test the storage wellhead components to 125 percent of MAOP in conjunction with the hydrocarbon storage integrity test is onerous because it is too frequent. Such testing would require many caverns be completely emptied; a workover must be performed to pull tubing and wing valves. This commenter suggested a ten-year frequency

for such testing and rewording to identify which spool pieces must be tested.

A chemical company agreed with the originally proposed requirement in §3.95(o)(3) and §3.97(o)(3) to inspect and test the wellhead components periodically, but suggested alternative language to the requirement to test wellhead components every five years and included a subparagraph for alternatives to be approved by the Commission. The chemical company suggested a 15-year maintenance schedule if the well is equipped with a downhole packer or dual cemented strings within the salt, as are the chemical company's wells. This company commented that the Commission should require higher testing and maintenance standards for natural gas storage caverns. The company suggested a 15-year schedule to empty natural gas storage caverns; to inspect, test, and re-certify wellhead components; to inspect cemented casings and sonar brine-filled caverns; and to conduct nitrogen/brine interface MIT.

The Commission concurs that the testing frequency originally proposed could be too onerous for some cavern operators. Gas caverns would have to be emptied of product and filled with brine. The Commission proposes to extend the frequency of testing to ten years for liquid storage wells under §3.95(o)(3) and 15 years for gas storage wells under §3.97(o)(3), with the opportunity for a five-year extension of the time period for good cause.

A chemical company proposed a new requirement in §3.97(o)(1)(E) for the operator to notify the district office at least five days prior to conducting any integrity tests. The Commission notes that in §3.97(o)(1)(D) there is already a requirement that the operator must notify the district office at least five days prior to conducting any integrity tests.

A chemical company agreed that surface piping should be maintained and tested through an integrity management program as proposed in §3.95(o)(4).

A gas company and a pipeline association commented that language in §3.97(o)(4) regarding testing requirements for surface gas piping should be deleted because §8.101 of this title, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, and administered and enforced by the Safety Division, already covers such testing. The addition of a point of pressure regulation as previously recommended by the gas company and the pipeline association in §3.97(h)(3)(A) will remove possible testing redundancy.

Based on these comments, the Commission has withdrawn the originally proposed amendments to §3.95 and §3.97, and is publishing revised proposed amendments for comment.

The Commission proposes amendments to §3.95(a), relating to definitions, to amend the definition of "emergency shutdown valve" to substitute the term "wellhead" for "well." The Commission also proposes to amend the definition of "hydrocarbon storage well or storage well" to clarify that the well includes the storage wellhead, casing, tubing, borehole, and cavern.

The Commission proposes to add two new definitions. The Commission proposes to define the term "storage wellhead" as "equipment installed at the surface of the wellbore, including the casinghead and tubing head, spools, block or wing valves, and instrument flanges." In addition, the proposed new definition limits the length of spool pieces to less than six feet to allow the operator flexibility in aligning wellheads, emergency shutdown valves, and surface piping. The limitation on length is necessary because investigation results indicate that long spool pieces are subject to failure by water hammer effects. Industry input suggested limiting spool piece length to six feet.

The Commission proposes to add a new definition for the term "surface piping" as "any pipe within a storage facility that is directly connected to a storage well, outboard of the wellhead emergency shutdown valve and used to transport product, brine, or fresh water to or from a storage well whether such pipe is above or below ground level."

New definitions for "storage wellhead" and "surface piping" are needed because other proposed rule amendments specify that an emergency shutdown valve must be located between the storage wellhead and surface piping and such terms are not defined in the current rule.

The Commission proposes to amend §3.95(c)(4) to specify that a permit application must be filed for storing saltwater or brine in a pit, as well as for disposing of saltwater or other oil and gas waste arising out of or incidental to the creation, operation, or maintenance of an underground hydrocarbon storage facility.

The Commission proposes to amend §3.95(d), relating to standards for underground storage zone, to change the heading of subsection (d)(1) from "Impermeable salt formation" to "Geologic, construction, and operating performance," to more accurately describe the subject matter of this subdivision.

The Commission proposes substantive amendments to §3.95(h), relating to safety. The Commission proposes to amend §3.95(h) to specify that active storage wells must possess a functional emergency shutdown valve when the well is in service, notwithstanding compliance time periods for configuring the emergency shutdown valve on the wellhead. The Commission proposes to change the heading of §3.95(h)(2) from "Emergency shutdown valves" to "Storage wellhead" to reflect the fact that the Commission is proposing safety requirements for the entire storage wellhead, not just the emergency shutdown valves. The Commission proposes to re-designate subsection (h)(2)(A) as subsection (h)(2)(D) and to add a new subsection (h)(2)(A), which would require that a storage wellhead be designed, operated, and maintained to contain the contents of the storage well and protect against the loss of stored product.

The Commission proposes to amend §3.95(h)(2)(B) to require that either within three years of the effective date of this rule or in conjunction with the next scheduled mechanical integrity test of the storage well, the operator must install, as required, emergency shutdown valves in a position between the storage wellhead and the product and brine surface piping of each of hydrocarbon storage well and, if required, between the storage wellhead and fresh water surface piping of the well. The proposed amendment also allows an operator to file a request, within one year of the effective date of the section, for an exception to the storage wellhead configuration requirement or the compliance date of this subparagraph and to propose an alternative configuration for approval by the Commission or its designee.

The proposed amendment mandates locating the wellhead emergency shutdown valve directly between the wellhead and surface piping. This change in location of the wellhead emergency shutdown valve is intended to increase the safety of the emergency shutdown system. The current rule does not address the physical position or location of the emergency shutdown valve. Experience has shown that the emergency shutdown valve is most effective when the valve is flanged directly to the wellhead. The recent gas release and wellhead

failure at a gas storage facility resulted, in part, from the location of an emergency valve on surface piping approximately 35 feet from the wellhead. After the emergency shutdown valve closed as designed, a pressure transient, believed related to water hammer, fractured the brine surface piping, allowing gas to escape and ignite. A water hammer-induced pressure transient also is implicated in at least two release incidents associated with the failure of surface piping at liquid hydrocarbon storage facilities operating at Mont Belvieu.

The Commission proposes to change the heading of §3.95(h)(3) from "Brine and fresh water piping" to "Product, brine, and fresh water surface piping" to expand the requirements to address all surface piping and to clarify that specific requirements in the paragraph apply to specific types of surface piping. The Commission proposes to add a new subparagraph (A), which requires that the product surface piping be designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well. The Commission also proposes to specify that, for facilities under the administrative authority of the Commission's Safety Division, product surface piping extends from the wellhead emergency shutdown valve to the first point of downstream pressure regulation. This identifies the boundary between the respective administrative authorities of the Safety Division and of the Oil and Gas Division for hazardous materials piping for those facilities under the administrative authority of both divisions. The Oil and Gas Division has administrative authority over all fresh water and brine surface piping at hydrocarbon storage facilities under the jurisdiction of the Railroad Commission of Texas. In addition, the Oil and Gas Division has administrative authority over all product surface piping directly connected to storage wells at those hydrocarbon storage facilities not under the administrative authority of the Safety Division, such as underground hydrocarbon storage facilities physically located within oil refineries. The Safety Division does not have administrative authority over storage facilities located within facilities that are not under Railroad Commission jurisdiction, such as oil refineries. The Safety Division also does not have administrative authority over piping that does not transport hazardous materials, such as fresh water or brine piping.

The Commission proposes to add a new §3.95(h)(3)(B) to require that brine surface piping be designed for the maximum operating pressure on the brine side of the well and designed to transport, under emergency conditions, product to the brine system vapor control system, unless protected by a secondary emergency shutdown valve and unless the brine surface piping between the wellhead emergency shutdown valve and the secondary emergency shutdown valve is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well.

The Commission proposes to amend §3.95(h)(3)(C) (re-designated from subparagraph (B)) and add new §3.95(h)(3)(D) to clarify that the requirements in the subparagraph pertain to fresh water surface piping, and to clarify the requirement that such piping must be protected by an emergency shutdown valve, unless certain standards or design configurations are employed. For instance, fresh water surface piping that is disconnected from the wellhead or is connected to brine surface piping outboard of the emergency shutdown valve need not be protected by an emergency shutdown valve. Similarly, fresh water piping need not be protected by an emergency shutdown valve if it has a small internal diameter (less than two inches) and is designed to withstand the permitted maximum allowable operating pressure of the hydrocarbon side of the well and is monitored by an onsite attendant when in use. An emergency shutdown valve on small diameter (less than two inches) fresh water piping also is exempt from the requirement that the valve be located on the wellhead or separated from the wellhead by no more than a six-foot spool.

The Commission proposes to amend §3.95(h)(4)(C), regarding overfill detection and automatic shut-in methods, to require that, within one year of the effective date of the proposed amendments, each storage cavern shall have at least two required devices or methods of overfill detection. Currently, the rule does not specify that the devices or methods must be redundant. It has always been the intent of the Commission that in the event of the failure of some component, another method of overfill detection would remain functional. The Commission intends to insure that the failure of a single device does not disable both methods of overfill detection. The Commission proposes to amend subsection (h)(4)(C)(ii) to allow operators the flexibility of using pressure transducers on the brine piping in addition to pressure switches.

The Commission proposes to amend §3.95(h)(5) and (6), relating to leak detectors and brine system gas vapor control, respectively, to delete references to deadlines that already have already passed.

The Commission proposes to amend subsection (h)(7), relating to fire detection devices or methods, to add requirements for fire control systems and to delete a reference to a deadline that has already passed. The Commission proposes to add new subparagraph (C) to require that, within three years of the effective date of the amendment, fire suppression capability, designed for personnel rescue and equipment protection and cooling, be available at each storage wellhead in active storage service. The proposed new subparagraph would allow an operator to request Commission approval of an exception to this schedule or to the fire suppression requirement, as long as the request includes a proposal for an alternate schedule or means of protection from wellhead fire, and provided the request is made within one year of the effective date of the amendments.

The fire suppression requirement is intended to provide protection for rescue personnel and equipment cooling. The absence of such fire control systems contributed to the complete wellhead failure of a gas storage well and damage to adjacent structures associated with the gas release and fire at Moss Bluff Hub Partners. The fire suppression capability is not necessarily directed toward capacity sufficient to extinguish a wellhead fire. Extinguishing such a fire could be an imprudent course of action, unless the source of the leak was found and repaired. Rather, the fire suppression capability should be sufficient to provide for short-term protection for emergency personnel and for cooling of structures and wellheads potentially affected by a fire at a wellhead or surface pipe.

The Commission proposes to amend §3.95(h)(8), relating to emergency response plan, to delete a reference to a deadline that already has passed.

The Commission proposes to amend §3.95(h)(9)(B), relating to notification of emergency or uncontrolled release, to require that, within 30 days of any emergency, significant loss of fluids, significant mechanical failure, or other problem that increases the potential for an uncontrolled release, an operator file with the Commission a written report on the root cause of the incident, and, within 90 days of an incident, file with the Commission a written report describing the operational changes, if any, that will be implemented to reduce the likelihood of the recurrence of a similar incident. For good cause, the Commission may extend

by up to 30 days the date by which an operator must file a report on the root cause of the incident. The current rule requires only written confirmation of an event within five working days of the event. The proposed amendments would make hydrocarbon storage operations safer in the future by better helping the Commission and operators identify causes of uncontrolled releases and make corrections to prevent or reduce releases.

The Commission proposes to amend §3.95(h)(10) relating to public education, §3.95(h)(12) relating to employee safety training, §3.95(h)(13), relating to warning systems and alarms, and §3.95(h)(14), relating to wind socks, to delete references to deadlines that already have passed.

The Commission proposes to amend §3.95(h)(15), relating to Barriers, to delete reference to a deadline that already has passed and to require barriers around above ground hydrocarbon piping, process equipment and storage vessels in areas within 100 feet of a public road, in addition to the current requirement that barriers be placed where vehicles normally may be expected to travel. The Commission proposes this amendment because there has been at least one incident in which a driver lost control of a vehicle on a public road, causing the vehicle to leave the roadway and hit surface piping at a gas storage facility.

The Commission proposes to add new §3.95(h)(16), relating to wellhead, surface piping, and associated valves, to require that such piping and equipment be designed, installed, and operated in accordance with engineering standards appropriate to the expected service conditions to which the piping and equipment will be subjected.

The Commission proposes to amend §3.95(i)(6) to make a conforming change.

The Commission proposes to amend §3.95(k)(1) to clarify that the operating pressure of each hydrocarbon storage well may not exceed the permitted maximum allowable operating pressure. This proposed change is intended to conform the rule language generally accepted use of the phrase "maximum allowable operating pressure."

The Commission proposes to amend §3.95(l), relating to monitoring requirements, to call for individual well metering of volumes injected and withdrawn in paragraph (3), and to add a new paragraph (5) on data recording. The new paragraph would require that, within three years of the effective date of the amendments, operators have in place and functioning a system to electronically record all liquid and gas pressures, injection volumes, and rates at least once per minute and that operators record all emergency actuations of the emergency shutdown valve. This increased frequency of data recording is needed to insure that operators record sufficient information relating to the physical conditions that immediately precede an accident or incident to help diagnose the root cause or causes of an incident. Experience with several incidents at hydrocarbon storage facilities has revealed that operators did not record operational data at a sufficient frequency to help diagnose the root cause of the incident.

The Commission proposes to change the heading of §3.95(n) from "Records retention" to "Operations, construction, and maintenance records retention." The proposed amendments to subsection (n)(1) would require that operators retain electronic records of well pressures, flow rates, and hydrocarbon volumes for three months instead of five years. The proposed amendment would also add flow rates and hydrocarbon volumes to the record keeping requirement for each well, and would delete interface levels from the recording requirement. Because these operational data are primarily intended to diagnose accidents and incidents, long-term retention is unwarranted. The proposed amendments in subsection (n)(1) also clarify that the records of maximum wellhead pressures on the hydrocarbon and brine sides of each hydrocarbon storage well and the net volumes of hydrocarbons injected into and withdrawn from each hydrocarbon storage well which the operators are required to report to the Commission under subsection (m) must be retained for five years. Proposed amendments in subsection (n)(2) clarify that records associated with testing and performance measurement, required under subsection (l)(4), and testing of safety devices, required under subsection (h), must be retained for five years. The Commission proposes to change the heading of subsection (n)(3) from "Equipment data" to "Construction and maintenance data," and to require an operator to retain for the life of the facility documents and records pertaining to drilling, mining, and completion of storage wells, testing of storage well integrity, and major repairs on and workovers of the well. The extension of the retention period is prudent and necessary to insure that critical information on well construction, workovers, repairs, and testing is retained for the life of the facility. It is often necessary to examine the results of original completion, workovers, and testing procedures to properly interpret current test results, particularly for tests that have recurrence intervals of five years, such as mechanical integrity tests. Obviously, in cases where these records are currently unavailable, the Commission does not intend for the new requirement to be applied retroactively. However, with the new requirement, the Commission intends to insure that if the records currently are available, they will be preserved for the life of the facility, and will pass to future owners or operators of the facilities with the transfer of ownership or operatorship.

The Commission proposes to change the heading of §3.95(o) from "Testing" to "Testing and Maintenance." Proposed new paragraph (1) would require that all hydrocarbon storage wells drilled into salt domes with a single casing string cemented to the surface have the casing inspected by mechanical, ultrasonic, or magnetic methods at least once every five years and after each workover that involves physical changes to the cemented casing string. Currently, all operators of liquid hydrocarbon storage wells drilled into salt domes with a single casing string cemented to the surface are required by permit to have the casing inspected by mechanical, ultrasonic, or magnetic methods at least once every five years. Since the Commission and operators agreed to implement the permit conditions requiring such testing, the tests have detected significant casing damage, allowing the operators at four facilities to repair the damage ore remove the wells from service before a significant leak could occur. Nitrogen-brine mechanical integrity tests are not capable of detecting most classes of casing damage. The proposed amendment would insure that in the event of transfer of ownership of well facilities, the new operators are bound to the same requirements of previous owners.

The Commission proposes to add a new paragraph (3) to subsection (o), relating to storage wellhead, to require operators to inspect and pressure test storage wellhead components to 125 percent of permitted maximum allowable operating pressure at least every ten years. In addition, upon a showing of good cause, an operator may request an additional five-year extension. Although it is typical industry practice to test wellhead components in conjunction with a storage well mechanical integrity test, such tests currently are not mandated by rule.

The Commission proposes to add new paragraph (4) to subsection (o), relating to product, freshwater, and brine surface piping. The new paragraph would require, within three years of the effective date of this section or in conjunction with the storage well integrity testing, that all product, freshwater, and brine surface piping within a hydrocarbon storage facility be maintained according to a piping integrity management plan and that within one year, the operator must submit such a plan to the Commission for approval. This proposed amendment aligns the requirements for the testing and maintenance of surface piping within storage facilities with current testing and maintenance requirements for pipelines transporting hazardous materials.

The Commission proposes amendments to §3.97, relating to Underground Storage of Gas in Salt Formations. The Commission proposes amendments to subsection (a) to amend the definitions of "emergency shutdown valve," "gas storage well or storage well," and "leak detector," and to add new definitions for the terms "storage wellhead" and "surface piping." The Commission proposes to amend the definition of "emergency shutdown valve" to substitute "wellhead" for "well." The Commission proposes to amend the definition of "gas storage well or storage well" to clarify that the term includes the storage wellhead, casing, tubing, borehole, and cavern. The Commission proposes to amend the definition of "leak detector" to include "fire" detectors. Leak detectors must be capable of detection by chemical or physical means the presence of gas or the escape of gas or the presence of flame or heat of a fire. References to "vapor" are deleted from the definition; the natural gas in a storage cavern is not technically a vapor, because there is no natural gas liquid in the system.

The Commission proposes to add a definition of "storage wellhead" to mean the equipment installed at the surface of the wellbore, including the casinghead and tubing head, spools, block or wing valves, and instrument flanges. In addition, the proposed language would limit the length of spool pieces to less than six feet to allow operators flexibility in aligning wellheads, emergency shutdown valves, and surface piping. The limitation on length is necessary to prevent the installation of unnecessarily long spool pieces, which are subject to failure by water hammer effects during closure of the emergency shutdown valve as was the case at the recent gas release and fire at the gas storage facility described above. The Commission proposes to define "surface piping" as any pipe within a storage facility that is directly connected to a storage well and used to transport gas, brine, or fresh water to or from a storage well whether such pipe is above or below ground level. New definitions for "storage wellhead" and "surface piping" are needed because other proposed rule amendments specify that the emergency shutdown valve must be located between the storage wellhead and surface piping, and these terms are not defined in the current rule.

The Commission proposes to amend the title of §3.97(d)(1) from "Impermeable salt formation" to "Geologic, construction, and operating performance" to more accurately describe the subject matter of this subdivision.

The Commission proposes to amend §3.97(e)(3), relating to notice and hearing, to correct a typographical error.

The Commission proposes to amend §3.97(h), relating to safety, to specify that active storage wells must possess a functional emergency shutdown valve when the well is in service, notwithstanding compliance time periods for configuring the emergency shutdown valve on the wellhead. The Commission proposes to amend §3.97(h)(2), relating to emergency shut down valves, to change the title of the paragraph to "Storage wellhead." The Commission proposes to add a new subsection (h)(2)(A), which would require that a storage wellhead be designed, operated, and maintained to contain the contents of the storage well and protect against the loss of stored product. The Commission proposes to modify subparagraph (B) (re-designated from subparagraph (A)) to require that, within three years of the effective date of these amendments or in conjunction with the next mechanical integrity test of the storage cavern, the operator install, as required, emergency shutdown valves in a position between the wellhead and the gas injection/withdrawal surface piping of each storage well and between the wellhead and any brine or fresh water surface piping. In addition, the Commission proposes to add a requirement that there may be no gas, brine, or fresh water piping between the wellhead and the emergency shutdown valve. The new language would allow an operator to request an exception to the storage wellhead configuration or compliance date and to propose an alternative configuration or workover schedule, provided that the request and alternative proposal are received within one year of the effective date of these amendments. The Commission or its designee must approve any such request. The Commission proposes to change the designation of §3.97(h)(2)(B) to §3.97(h)(2)(C).

The proposed amendment mandating the location of the emergency shutdown valve directly between the wellhead and surface piping is intended to enhance the safety of the emergency shutdown system. The current rule does not address the physical positioning of the emergency shutdown valve. Experience has shown that the safest location for the emergency shutdown valve is flanged directly to the wellhead. The recent gas release and wellhead failure at a gas storage facility resulted, in part, from the location of an emergency valve on surface piping. After the emergency shutdown valve closed as designed, a pressure transient, believed related to water hammer, fractured the brine surface piping allowing gas to escape and ignite.

The Commission proposes to add new paragraph (3) to subsection (h), relating to gas, brine, and fresh water piping. New subsection (h)(3)(A) would require that gas surface piping be designed for the permitted maximum allowable operating pressure on the hydrocarbon side. The Commission also proposes to specify that, for facilities under the administrative authority of the Commission's Safety Division, product surface piping extends from the wellhead emergency shutdown valve to the first point of downstream pressure regulation. This identifies the respective responsibilities of the Safety Division and of the Oil and Gas Division for hazardous materials piping for those facilities under the administrative authority of both divisions. The Oil and Gas Division is responsible for regulating all fresh water and brine surface piping at hydrocarbon storage facilities under the jurisdiction of the Railroad Commission of Texas. In addition, the Oil and Gas Division has administrative authority over all product surface piping directly connected to storage wells at those hydrocarbon storage facilities not under the administrative authority of the Safety Division, such as underground hydrocarbon storage facilities physically located within oil refineries. The Safety Division does not have administrative authority over storage facilities located within facilities that are not under Railroad Commission jurisdiction, such as oil refineries. The Safety Division also does not have administrative authority over piping that does not transport hazardous materials, such as fresh water or brine piping.

New subsection (h)(3)(B) would require that brine surface piping be designed for the maximum brine wellhead pressure unless protected by a secondary emergency shutdown valve and unless

the brine surface piping between the wellhead emergency shutdown valve and the secondary emergency shutdown valve is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well. New subsection (h)(3)(C) and (D) would require that fresh water surface piping be protected by an emergency shutdown valve unless certain standards or design configurations are employed. For instance, fresh water surface piping that is disconnected from the wellhead or is connected to brine surface piping outboard of the emergency shutdown valve need not be protected by an emergency shutdown valve. Similarly, fresh water piping need not be protected by an emergency shutdown valve if it has a small internal diameter (less than two inches) and is designed for the permitted maximum allowable operating pressure on the hydrocarbon side and is monitored by an onsite attendant when in use. An emergency shutdown valve on small diameter (less than two inches) fresh water piping is also exempt from the required location on the wellhead or separated from the wellhead by no more than a six-foot spool. This language is parallel to that proposed in §3.95(h)(3)(C) and (D) for liquid storage wells where fresh water surface piping is more commonly installed.

The Commission proposes to amend renumbered subsection (h)(4), relating to cavern debrining and solution mining operations, to require that each storage well have two or more redundant devices or methods of overfill detection during cavern de-brining operations or solution mining operations conducted with gas in storage in the same cavern. It has always been the intent of the Commission that, in the event of the failure of some component, another method of overfill detection remains functional. The Commission intends to enhance the likelihood that the failure of a single device does not disable both methods of overfill detection.

The Commission proposes to amend renumbered §3.97(h)(4)(i) and (ii) specifically to allow the use of pressure transducers in addition to pressure switches.

The Commission proposes to change the title of renumbered subsection (h)(5) from "Leak detectors" to "Leak or fire detectors," and to require that, within two years of the effective date of these amendments, a leak or fire detector be installed and in operation at each gas storage well and each structurally enclosed compressor site. The Commission proposes to delete the language in this paragraph concerning distance from a residence, commercial establishment, church, school, or small and well defined outside area as well as the definition of "well defined outside area." Currently, the rule requires operators to install leak detectors only if a storage well or compressor station is within 100 yards of a residence, commercial establishment, church, school, or public area. The proposed change would require operators to install leak or fire detectors regardless of the distance to commercial or public facilities. A major release incident at one gas storage facility demonstrated that the potential for significant damage and risk to public heath and safety extends beyond 100 yards from a storage well or compressor station. The Commission proposes to make conforming amendments to subparagraph (B).

The Commission proposes to amend renumbered subsection (h)(6), relating to warning systems and alarms, to require that all leak or fire detectors or other methods that actuate the emergency shutdown valve be integrated with warning systems within two years of the effective date of these amendments.

The Commission proposes to amend renumbered subsection (h)(7) to remove a reference to a deadline that has already passed.

The Commission proposes to amend renumbered subsection (h)(8), relating to notification of emergency or uncontrolled release, to clarify that an operator must report to the Commission any significant loss of gas, as well as fluids. In addition, the amended language would require that within 30 days of an incident, the operator file with the Commission a written report on the root cause of the incident and within 90 days of an incident, the operator file with the Commission a written report that describes the operational changes, if any, that will be implemented to reduce the likelihood of a recurrence of a similar incident. For good cause, the Commission may extend by up to 30 days the date by which an operator must file a report on the root cause of the incident. This language would replace the current requirement that requires that the operator report a significant loss of fluids and confirm the report in writing within five working days.

The Commission proposes to add a new paragraph (11) to subsection (h), relating to fire suppression capability, to require that, within three years of the effective date of these amendments, each operator have fire suppression capability installed at each wellhead and designed for personnel rescue and equipment protection and cooling, unless the operator requests, within one year of the effective date of these amendments and the Commission or its designee approves, an exception to the schedule or fire suppression requirement. The fire suppression requirement is intended to provide protection for rescue personnel and equipment cooling. The absence of such fire control systems contributed to the complete wellhead failure of a gas storage well and damage to adjacent structures associated with the gas release and fire at Moss Bluff Hub Partners. The fire suppression capability is not necessarily intended to be sufficient to extinguish a wellhead fire. Extinguishing such a fire could be an imprudent course of action, unless the source of the leak was found and repaired. Rather, the Commission intends that the operator have capability sufficient to provide for short-term protection of emergency personnel protection and for cooling of structures and wellheads potentially affected by a fire from a well or surface pipe.

The Commission proposes to add a new paragraph (12) to subsection (h), relating to wellhead piping and related equipment, to require that all wellhead equipment, gas, fresh water, and brine surface piping and associated valves be designed, installed, tested, maintained, and operated in accordance with engineering standards appropriate to the expected service conditions to which the piping and equipment will be subjected.

The Commission further proposes to add a new paragraph (13) to subsection (h), relating to barriers, which would require that, within one year of the effective date of these amendments, operators place barriers designed to prevent unintended impact by vehicles and equipment around above grade hydrocarbon piping, hydrocarbon processing equipment where vehicles normally may be expected to travel, or within 100 feet of a public road. The Commission proposes this amendment because there has been at least one incident in which a driver lost control of a vehicle on a public road, causing the vehicle to leave the roadway and hit above ground piping at a gas storage facility.

The Commission proposes to make other conforming amendments to subsection (h) and to update the rule to indicate that requirements for which previous versions of the rule established

deadlines are now current requirements because the deadlines have passed.

The Commission proposes to amend §3.97(k), relating to Operating pressure, to insert "allowable" into the phrase "permitted maximum allowable operating pressure" and to specify that permitted maximum allowable operating pressure is that pressure identified on the Commission permit or order, or on the permit application.

The Commission proposes to amend §3.97(l)(1), relating to gas pressure, to make conforming amendments to clarify that pressure sensors must be integrated electronically with the emergency shutdown valve actuation system as required by the amendments proposed in §3.97(h). The Commission also proposes to amend paragraph (3) to call for individual well metering of volumes injected and withdrawn, and to add a new paragraph (5), relating to data recording. The new paragraph would require that, within three years of the effective date of these amendments, operators electronically record all liquid and gas pressures, injection volumes and rates at least once per minute, and that operators record all emergency actuations of the emergency shutdown valve. This proposed amendment is designed to aid in the analysis of upset conditions by requiring operators to record operational data at relatively frequent intervals. The lack of electronically recorded data on operational conditions at a sufficient frequency has hindered the ability of operators and the Commission to understand operating conditions immediately preceding incidents at storage facilities.

The Commission proposes to change the title of §3.97(n) from "Records retention" to "Operations, construction, and maintenance records retention," and to propose new records retention requirements. The Commission proposes to change the title of paragraph (1) from "Gas injection and withdrawal data" to "Operations data," and to amend this subsection to require that operators retain electronic records of well pressures, flow rates, gas volumes for three months instead of five years. Because these operational data are intended primarily to diagnose accidents and incidents, long-term retention is unwarranted. There is a new paragraph (2), which would require an operator to retain for at least five years the records of measurement performance under subsection (l)(4); and testing of safety devices under subsection (h). The records of any test of a safety device required under subsection (h) must be available for on-site inspection within 10 days of the date of the test. The Commission proposes to change the title of renumbered paragraph (3) from "Equipment data" to "Construction and maintenance data" and to amend this subsection to require that operators maintain documents and records on the drilling, mining, completion, major repairs, and workovers of storage wells and the testing of storage well integrity required under subsections (h) and (l) and that those records be retained for the life of the facility. The extension of the retention period is prudent and necessary to insure that critical information on well construction, repair, and workover and the testing of storage well integrity be retained for the life of the facility. It is often necessary to examine the results of past tests and procedures to properly interpret current tests, particularly tests that have recurrence intervals of five years, such as mechanical integrity tests. Obviously, in cases where these records currently are unavailable, the Commission does not intend that the new requirement be applied retroactively. However, the new requirement would insure that if the records are currently available, they will be preserved for the life of the facility and will pass for retention purposes to future owners and/or operators of the facilities with the transfer of ownership or operatorship.

The Commission proposes to amend §3.97(o), relating to Testing, to change the title to "Testing and maintenance." The Commission proposes to add a new paragraph (3), relating to "Storage wellhead," that would require that testing or inspection of storage wellhead components be performed in conjunction with the integrity test schedule of the hydrocarbon storage well. The Commission proposes to add a new paragraph (4), relating to "Fresh water, brine, and gas surface piping," to require that all gas, brine, and fresh water surface piping be maintained according to a piping integrity management plan within three years or in conjunction with the testing of storage well integrity. Within one year of the effective date of this section, the operator must submit a piping integrity management plan to the Commission for approval. This proposed amendment aligns the requirements for the testing and maintenance of surface piping in a gas storage facility with current testing and maintenance requirements for pipelines transporting hazardous materials. Gas piping and fresh water and brine piping within storage facilities could, in emergency situations, transport hazardous materials.

Leslie Savage, Planning and Administration, Oil and Gas Division, has determined that for each year of the first five years the proposed amendments will be in effect, the fiscal implications as a result of enforcing or administering amended §§3.95 and 3.97 will be negligible.

There will be no fiscal implications for local governments.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on individuals, small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Ms. Savage has determined that the proposed amendments would not affect any small or micro-businesses so there would be no cost of compliance for individuals, small businesses or micro-businesses. However, Commission staff has attempted to calculate the anticipated average economic cost of upgrading facilities to meet the proposed amendments to §§3.95 and 3.97. Currently, there are 54 facilities in Texas at which liquid or liquefied hydrocarbons are stored in underground salt formations. There are approximately 497 storage wells at these 54 facilities. Many of these facilities already have in place the additional safety equipment that would be required under these proposed amendments. The Commission sent a survey to the operators of these facilities to determine the current equipment status and piping configuration at liquid hydrocarbon storage facilities, and the responses indicate that at least 29 percent and up to 37 percent of the liquid storage wells have emergency shutdown valves that already are located between the wellhead and surface piping or are attached to spool pieces. In addition, 89 percent of the wells associated with liquid storage operations have some form of fire suppression capability. Fire or leak detection devices already are required at wells in liquid hydrocarbon storage service, whereas only gas storage wells near public schools, churches or public areas are currently required to have leak or fire detection devices.

Most operators of liquid hydrocarbon storage facilities have some mechanism in place to verify the integrity of surface piping. Responses to the Commission's survey indicate that the operators of only 11 percent of the liquid hydrocarbon storage wells did not have a surface piping integrity management plan or did not know if a plan existed.

These statistics show that for the new safety proposals being contemplated in this rulemaking, a significant number of operators of liquid hydrocarbon storage wells already have met the proposed new requirements in this rulemaking.

The total anticipated average economic cost of complying with amendments regarding reinstalling emergency shutdown valves, installing fire monitors, and fire detectors during the first three years the section is in effect is estimated to exceed $4,000,000 for all of the 40 existing liquid hydrocarbon storage facilities and is estimated to exceed $1,000,000 for all of the 14 existing natural gas storage facilities. The Commission determined this anticipated average economic cost based upon information submitted to the Commission in response to the 2005 survey, and upon assumptions regarding costs of safety equipment and devices required under proposed amendments to §3.95. The Commission was unable to estimate the cost of complying with new requirements regarding data recording and retention.

In comparison to the estimated anticipated costs of complying with the proposed new requirement, the failure of a single gas storage well at a gas storage facility resulted in the loss of five billion cubic feet of gas at an estimated cost of $30,000,000. Damage to the surrounding facility is estimated to be in the millions of dollars.

Based on the response of operators of facilities storing natural gas in salt caverns to the Commission's survey, at least 58 percent and up to 75 percent of gas storage wells currently have emergency shutdown valves that already are located between the wellhead and surface piping or are attached to spool pieces. In addition, 36 percent of the gas storage wells have some form of fire suppression capability. Fire or leak detection devices already are required at wells in liquid storage service, whereas only gas storage wells near public schools, churches or public areas are required to have leak or fire detection devices. Currently, although no gas storage wells are located near public schools, churches or public areas, approximately 30 percent of the wells are protected by such devices.

Operator responses to the survey indicate that for all the major new safety proposals being contemplated, a significant number of operators of gas storage wells already have implemented many of the proposed amendments.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect the primary public benefit will be an increase in the safety of persons living and working in areas where liquid or liquefied hydrocarbons or natural gas or other gases are stored in underground formations. In addition, these amendments will increase safety of personal or public property located in such areas.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission specifically solicits comments regarding the estimated anticipated costs of the proposed amendments. The Commission will accept comments for 30 days after publication in the *Texas Register*. Comments should refer to Oil & Gas Docket No. 20-0245837. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §§3.95 and 3.97 under (1) Texas Natural Resources Code, §81.051, which gives the Commission jurisdiction over all common carrier pipelines in Texas, oil and gas wells in Texas, persons owning or operating pipelines in Texas, and persons owning or engaged in drilling or operating oil or gas wells in Texas; (2) Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; (3) Texas Natural Resources Code, §85.041, which prohibits the purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of oil or gas, produced in whole or in part in violation of any oil or gas conservation statute of this state or of any rule or order of the Commission under such a statute, and the purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of any product of oil or gas which is derived in whole or in part from oil or gas or any product of either, which was in whole or part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation statute of this state, or of any rule or order of the Commission under such a statute; (4) Texas Natural Resources Code, §85.042, which authorizes the Commission to promulgate and enforce rules and orders necessary to carry into effect the provisions of §85.041, and to prevent that section's violation, and, when necessary, to make and enforce rules either general in their nature or applicable to particular fields for the prevention of actual waste of oil or operations in the field dangerous to life or property; (5) Texas Natural Resources Code, §85.201, which directs the Commission to make and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas; (6) Texas Natural Resources Code, §85.202, which authorizes the Commission to make rules and orders to prevent waste of oil and gas in drilling and producing operations and in the storage, piping, and distribution of oil and gas; to require dry or abandoned wells to be plugged in a manner that will confine oil, gas, and water in the strata in which they are found and prevent them from escaping into other strata; for the drilling of wells and preserving a record of the drilling of wells; to require wells to be drilled and operated in a manner that will prevent injury to adjoining property; to prevent oil and gas and water from escaping from the strata in which they are found into other strata; to provide rules for shooting wells and for separating oil from gas; to require records to be kept and reports made; and to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the Commission's rules or orders for the prevention of waste, and authorizes the Commission to do all things necessary for the conservation of oil and gas and prevention of waste of oil and gas and to adopt other rules and orders as may be necessary for those purposes; (7) Texas Natural Resources Code, §86.041, which grants the Com-

mission broad discretion in administering the provisions of this chapter and to adopt any rule or order in the manner provided by law that the Commission finds necessary to effectuate the provisions and purposes of this chapter; (8) Texas Natural Resources Code, §86.042, which directs the Commission to adopt and enforce rules and orders to conserve and prevent the waste of gas; prevent the waste of gas in drilling and producing operations and in the piping and distribution of gas; require dry or abandoned wells to be plugged in a way that confines gas and water in the strata in which they are found and prevents them from escaping into other strata; provide for drilling wells and preserving a record of them; require wells to be drilled and operated in a manner that prevents injury to adjoining property; prevent gas and water from escaping from the strata in which they are found into other strata; require records to be kept and reports made; provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; and otherwise accomplish the purposes of this chapter; (9) Texas Natural Resources Code, §211.011, which gives the Commission jurisdiction over all salt dome storage of hazardous liquids and over salt dome storage facilities used for the storage of hazardous liquids; (10) Texas Natural Resources Code, §211.012, which directs the Commission to adopt safety standards and practices for the salt dome storage of hazardous liquids and the facilities used for that purpose that require the installation and periodic testing of safety devices at a salt dome storage facility; the establishment of emergency notification procedures for the operator of a facility in the event of a release of a hazardous substance that poses a substantial risk to the public; fire prevention and response procedures; employee and third-party contractor safety training with respect to the operation of the facility; and other requirements that the Commission finds necessary and reasonable for the safe construction, operation, and maintenance of salt dome storage facilities; (11) Texas Natural Resources Code, §211.013, which requires each owner or operator of a hazardous liquid salt dome storage facility to maintain records, make reports, and provide any information the Commission may require with respect to the construction, operation, or maintenance of the facility; and requires the Commission by rule to designate the records required to be maintained and the reports required to be filed by the owner or operator and shall provide forms for reports if necessary; (12) Texas Natural Resources Code, §117.012, which requires the Commission to adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and (13) Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated §60101, *et seq*.

Texas Natural Resources Code, §§81.051, 81.052, 85.041, 85.042, 85.201, 85.202, 86.041, 86.042, 211.011, 211.012, 211.013, and 117.012, and Texas Utilities Code, §§121.201-121.210 are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.041, 85.042, 85.201, 85.202, 86.041, 86.042, 211.011, 211.012, 211.013, and 117.012, and Texas Utilities Code, §§121.201-121.210.

Cross-reference to statutes: Texas Natural Resources Code, §§81.051, 81.052, 85.041, 85.042, 85.201, 85.202, 86.041, 86.042, 211.011, 211.012, 211.013, and 117.012, and Texas Utilities Code, §§121.201-121.210.

Issued in Austin, Texas, on July 6, 2006.

§3.95. Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations.

(a) Definitions. The following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Emergency shutdown valve--A valve that automatically closes to isolate a hydrocarbon storage wellhead [~~well~~] from surface piping in the event of specified conditions that, if uncontrolled, may cause an emergency.

(6) - (7) (No change.)

(8) Hydrocarbon storage well or storage well--A well, including the storage wellhead, casing, tubing, borehole, and cavern, used for the injection or withdrawal of liquid or liquefied hydrocarbons into or out of an underground hydrocarbon storage facility.

(9) - (10) (No change.)

(11) Operator--The person recognized by the Commission [~~commission~~] as being responsible for the physical operation of an underground hydrocarbon storage facility, or such person's authorized representative.

(12) Owner--The person recognized by the Commission [~~commission~~] as owning all or part of a storage facility, or such person's authorized representative.

(13) - (15) (No change.)

(16) Storage wellhead--Equipment installed at the surface of the wellbore, including the casinghead and tubing head, spools, block or wing valves, and instrument flanges. Spool pieces must have a length of less than six feet to be considered a part of the storage wellhead.

(17) Surface piping--Any pipe within a storage facility that is directly connected to a storage well, outboard of the wellhead emergency shutdown valve and used to transport product, brine, or fresh water to or from a storage well whether such pipe is above or below ground level.

(18) [~~(16)~~] Underground hydrocarbon storage facility or storage facility--A facility used for the storage of liquid or liquefied hydrocarbons in an underground salt formation, including surface and subsurface rights, appurtenances, and improvements necessary for the operation of the facility.

(b) Permit required.

(1) General. No person may create, operate, or maintain an underground hydrocarbon storage facility without obtaining a permit from the Commission [~~commission~~]. A permit issued by the Commission [~~commission~~] for such activities before the effective date of this section shall continue in effect until revoked, modified, or suspended by the Commission [~~commission~~], or until it expires by its terms. The provisions of this section apply to permits for underground hydrocarbon storage facility operations issued prior to the effective date of this section, except as specifically provided in this section.

(2) Conflict with other requirements. If a provision of this section conflicts with any provision or term of a Commission [~~commis-~~

~~sion~~] order, field rule, or permit, the provision of such order, field rule, or permit shall control.

(c) Application.

(1) Information required. An application for a permit to create, operate, or maintain an underground hydrocarbon storage facility shall be filed with the Commission [~~commission~~] by the owner or operator, or proposed owner or operator, on the prescribed form. The application shall contain the information necessary to demonstrate compliance with the applicable state laws and Commission [~~commission~~] regulations.

(2) Permit amendment. An application for amendment of an existing underground hydrocarbon storage facility permit shall be filed with the Commission [~~commission~~]:

(A) - (E) (No change.)

(3) Increase in capacity. The owner or operator of a storage facility shall notify the Commission [~~commission~~] if information indicates that the capacity of a cavern exceeds the permitted cavern capacity by 20% or more. Such notification shall be made in writing to the Commission [~~commission~~] within 10 days of the date that the owner or operator knows or has reason to know that the cavern capacity exceeds the permitted capacity by 20% or more. The notification shall include a description of the information that indicates that the permitted cavern capacity has been exceeded, and an estimate of the current cavern capacity. Upon receipt of such information, the Commission [~~commission~~] or its designee may take any one or more of the following actions:

(A) - (D) (No change.)

(4) Related activities. An application for a permit to store saltwater or brine in a pit or to dispose of saltwater or other oil and gas waste arising out of or incidental to the creation, operation, or maintenance of an underground hydrocarbon storage facility shall be filed in accordance with applicable Commission [~~commission~~] requirements.

(d) Standards for underground storage zone.

(1) Geologic, construction, and operating performance [~~Impermeable salt formation~~]. An underground hydrocarbon storage facility may be created, operated, or maintained only in an impermeable salt formation in a manner that will prevent waste of the stored hydrocarbons, uncontrolled escape of hydrocarbons, pollution of fresh water, and danger to life or property. Natural gas storage operations are not authorized under the provisions of this section. A permit under §3.97 of this title (relating to Underground Storage of Gas in Salt Formations) is required to convert from storage of liquid or liquefied hydrocarbons to storage of natural gas in an underground salt formation.

(2) (No change.)

(e) Notice and hearing.

(1) Notice requirements. [~~Such notice shall be given no later than the date the application is mailed to or filed with the commission.~~] The applicant shall, no later than the date the application is mailed to or filed with the Commission, give notice of an application for a permit to create, operate, or maintain an underground hydrocarbon storage facility, or to amend an existing storage facility permit, by mailing or delivering a copy of the application form to:

(A) - (F) (No change.)

(2) Publication of notice. Notice of the application, in a form approved by the Commission [~~commission~~] or its designee, shall be published by the applicant once a week for three consecutive weeks in a newspaper of general circulation in the county or counties where the facility is or is proposed to be located. The applicant shall file proof of publication prior to any hearing on the application or administrative approval of the application.

(3) Notice by publication. The applicant shall make diligent efforts to ascertain the name and address of each person identified under paragraph (1)(A) - (D) of this subsection. The exercise of diligent efforts to ascertain the names and addresses of such persons shall require an examination of the county records where the facility is located and an investigation of any other information of which the applicant has actual knowledge. If, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (1)(A) - (D) of this subsection, the notice requirements for those persons are satisfied by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the Commission [~~commission~~] specifying the efforts that were taken to identify each person whose name and/or address could not be ascertained.

(4) Hearing required for new permits. A permit application for a new underground hydrocarbon storage facility will be considered for approval only after notice and hearing. The Commission [~~commission~~] will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the Commission [~~commission~~].

(5) Hearing on permit amendments.

(A) An application for an amendment to an existing storage facility permit may be approved administratively if the Commission [~~commission~~] receives no protest from a person notified pursuant to the provisions of paragraph (1) of this subsection, or from any other affected person.

(B) If the Commission [~~commission~~] receives a protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person within 15 days of the date of receipt of the application by the Commission [~~commission~~], or of the date of the third publication, whichever is later, or if the Commission [~~commission~~] determines that a hearing is in the public interest, then the applicant will be notified that the application cannot be approved administratively. The Commission [~~commission~~] will schedule a hearing on the application upon written request of the applicant. The Commission [~~commission~~] will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the Commission [~~commission~~].

(C) If the application is administratively denied, a hearing will be scheduled upon written request of the applicant. After hearing, the examiner shall recommend a final action by the Commission [~~commission~~].

(f) Modification, cancellation, or suspension of a permit.

(1) General. Any permit may be modified, suspended, or canceled after notice and opportunity for hearing if:

(A) a material change in conditions has occurred in the operation, maintenance, or construction of the storage facility, or there are material deviations from the information originally furnished to the Commission [~~commission~~]. A change in conditions at a facility that does not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution is not considered to be material;

(B) (No change.)

(C) there are material violations of the terms and provisions of the permit or Commission [~~commission~~] regulations;

(D) - (E) (No change.)

(2) Imminent dangers. Notwithstanding the provisions of paragraph (1) of this subsection, in the event of an emergency that presents an imminent danger to life or property, or where waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water is imminent, the Commission [~~commission~~] or its designee may immediately suspend a storage facility permit until a final order is issued pursuant to a hearing, if any, conducted in accordance with the provisions of paragraph (1) of this subsection. All operations at the facility shall cease upon suspension of a permit under this paragraph.

(g) Transfer of permit. A storage facility permit may not be transferred without the prior approval of the Commission [~~commission~~] or its designee. Until such transfer is approved by the Commission [~~commission~~] or its designee, the proposed transferee may not conduct any activities otherwise authorized by the permit. The following procedure shall be followed when requesting approval for transfer of a permit.

(1) Request. Prior to transferring either ownership or operation of a storage facility, the permittee shall file a request for transfer of the permit with the Commission [~~commission~~]. Such request may not be filed unless a completed Form P-4, signed by both the permittee and the proposed transferee, has been filed with the Commission [~~commission~~].

(2) Approval. The Commission [~~commission~~], or its designee, shall approve the transfer of a storage facility permit, provided:

(A) the proposed transferee is not the subject of any unsatisfied Commission [~~commission~~] enforcement order at the time of the request for permit transfer; and

(B) there are no existing violations of any Commission [~~commission~~] regulation, order, or permit at the storage facility at the time of the request for permit transfer that have been documented by the Commission [~~commission~~], or its employees, unless the proposed transferee agrees to correct the violations according to a compliance schedule approved by the Commission [~~commission~~], or its designee.

(3) Good cause. Notwithstanding paragraph (2) of this subsection, for good cause shown the Commission [~~commission~~] or its designee may require public notice and opportunity for hearing prior to taking action on a request for transfer of a permit. Such request may be denied after notice and opportunity for hearing if the Commission [~~commission~~] or its designee finds that transfer of the permit would not be in the public interest.

(h) Safety. The following safety requirements shall apply to all underground hydrocarbon storage facilities, except as specifically provided otherwise, provided [~~. Provided~~], however, that the provisions of this subsection shall not apply to any hydrocarbon storage well that is out of service and disconnected from all surface piping. Notwithstanding the compliance time periods specified in [~~paragraphs (1) - (15) of~~] this subsection, a new storage facility permitted under this section must have all required safety measures and equipment in place before commencement of storage operations at the facility. All storage facilities that are permitted on the effective date of this section must have such safety measures and equipment in place within the period of time specified. Further, until such a facility has all the safety measures and devices required by paragraphs (2) - (7) and (13) - (16) [~~(13) - (15)~~] of this subsection in place, the facility must have an attendant on site at all times. Notwithstanding the compliance time periods specified in paragraph (2)(B) of this subsection, no storage well in active service may be operated without a fully functional emergency shutdown valve unless in compliance with specified conditions of paragraph (2)(C) of this subsection.

(1) (No change.)

(2) Storage wellhead [~~Emergency shutdown valves~~].

(A) The storage wellhead shall be designed, operated, and maintained to contain the contents of the storage well and protect against loss of stored product.

[~~(A) The requirements of this paragraph do not apply to underground hydrocarbon storage facilities storing only crude oil.~~]

(B) Either within three years of the effective date of this section, or in conjunction with the next scheduled integrity test of the storage well, the operator shall have installed emergency shutdown valves between the storage wellhead and the product and brine surface piping of each hydrocarbon storage well and, if required under paragraph (3) of this subsection, between the storage wellhead and fresh water surface piping of the well. Within one year of the effective date of the section, an operator may request an exception to the storage wellhead configuration or compliance date of this subparagraph and propose an alternative configuration or workover schedule for approval by the Commission or its designee. A storage well that is out of service and is disconnected from surface piping shall be exempt from this requirement until reactivated for active hydrocarbon storage. Emergency shutdown valves shall meet the following requirements.

[~~(B) Within two years of the effective date of this section, emergency shutdown valves shall be installed on the product and brine sides of each hydrocarbon storage well and, if required under paragraph (3) of this subsection, on fresh water piping to the well. An operator may request an exception to the compliance date of this subparagraph and propose an alternative workover schedule for approval by the commission or its designee. A storage well that is out of service and is disconnected from surface piping shall be exempt from this requirement until reactivated for hydrocarbon storage. Emergency shutdown valves shall meet the following requirements.~~]

(i) Each emergency shutdown valve shall be capable of activation at each storage well, at the on-site control center if one exists, at the remote control center if one exists, and at a location that is reasonably anticipated to be accessible to emergency response personnel at any facility that does not have an on-site control center that is attended 24 hours per day.

(ii) Each emergency shutdown valve shall be an automatic fail-closed valve that automatically closes when there is a loss of pneumatic pressure, hydraulic pressure, or power to the valve.

(iii) Each emergency shutdown valve shall be closed and opened at least monthly.

(iv) Each emergency shutdown valve system shall be tested at least twice each calendar year at intervals not to exceed 7 1/2 months. The test shall consist of activating the actuation devices, checking the warning system, and observing the valve closure.

(C) (No change.)

(D) The requirements of this paragraph do not apply to underground hydrocarbon storage facilities storing only crude oil.

(3) Product, brine, [~~Brine~~] and fresh water surface piping.

(A) Product surface piping shall be designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well. For facilities with hazardous materials surface piping under the administrative authority of the Safety Division of the Railroad Commission of Texas, for the purposes of this section, product surface

piping extends from the wellhead emergency shutdown valve to the first pressure regulation device, including a manual, motor-operated, or emergency shutdown valve.

[~~(A) Brine piping from the wellhead to the emergency shutdown valve shall be designed for the maximum wellhead pressure on the hydrocarbon side of the well.~~]

(B) Brine surface piping shall be designed for the maximum brine wellhead pressure and to transport, under emergency conditions, product to the brine system gas vapor control system described in paragraph (6) of this subsection unless:

(i) a secondary emergency shutdown valve is in operation on the brine surface piping; and

(ii) the brine surface piping between the wellhead emergency shutdown valve and the secondary emergency shutdown valve is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well.

(C) [~~(B)~~] Fresh water surface piping, if any, must [~~either~~] be equipped with a wellhead emergency shutdown valve unless it is:

(i) disconnected [~~isolated~~] from the wellhead [~~when fresh water is not being injected into the well~~]; or

(ii) connected to brine surface piping outboard of the wellhead emergency shutdown valve; or

(iii) [~~(ii)~~] designed for the permitted maximum allowable operating [~~wellhead~~] pressure on the hydrocarbon side of the well; and has an internal diameter of less than or equal to two inches; and an attendant is posted at the well site to provide immediate manual shut-in when in use [~~and equipped with an emergency shutdown valve~~].

(D) Fresh water piping designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well and with an internal diameter of less than or equal to two inches is exempt from the requirement that an emergency shutdown valve be located on the wellhead or separated from the wellhead by a spool no longer than six feet.

(4) Overfill detection and automatic shut-in methods.

(A) - (B) (No change.)

(C) Within one year of the effective date of this section, each storage cavern shall have at least two [~~one~~] of the following redundant devices or methods in operation[~~. Within two years of the effective date of this section, each storage cavern shall have at least two of the following devices or methods in operation~~]:

(i) (No change.)

(ii) a preset pressure sensor switch or transducer on the brine piping that is set to automatically close all emergency shutdown valves in response to a preset pressure. This pressure sensor or transducer may be used in conjunction with weep hole(s) on a safety string that is concentric with the brine string, or in conjunction with weep hole(s) on the brine string;

(iii) - (iv) (No change.)

(v) an alternate device or method approved by the Commission [~~commission~~] or its designee.

(5) Leak detectors.

(A) (No change.)

(B) A [~~Within two years of the effective date of this section, a~~] leak detector shall be installed and in operation at the wellhead of each hydrocarbon storage well and at each process and transfer area and each surface vessel area that contains liquid or liquefied hydrocarbons. These leak detectors shall be integrated with the warning system required in paragraph (13)(A) of this subsection.

(C) Leak [~~Within two years of the effective date of this section, leak~~] detectors shall be installed and in operation at four locations that are evenly spaced around the perimeter of the brine pit(s).

(D) (No change.)

(6) Brine system gas vapor control.

(A) (No change.)

(B) Gas [~~Within two years of the effective date of this section, gas~~] vapor control devices shall be installed and in operation at each brine pit system to ignite or capture hydrocarbon vapors that are heavier than air. Control devices shall consist of at least one of the following:

(i) - (iv) (No change.)

(C) (No change.)

(7) Fire detection devices or methods and fire control systems.

(A) Fire [~~Within two years of the effective date of this section, fire~~] detection devices or methods shall be installed and in operation at all process and transfer areas. Fire detection devices or methods specified in this paragraph shall be integrated with the warning system required in paragraph (13)(A) of this subsection. Fire detection shall consist of at least one of the following:

(i) - (iii) (No change.)

(B) (No change.)

(C) Within three years of the effective date of this section, each storage wellhead in active storage service shall have fire suppression capability designed to aid in personnel rescue and for equipment protection and cooling. Within one year of the effective date of this section, the operator may request an exception to the schedule or fire suppression requirement of this subparagraph and propose an alternative schedule or means of protection from wellhead fire for approval of the Commission or its designee.

(8) Emergency response plan. Each [~~Within six months of the effective date of this section, each~~] storage facility shall submit to the Commission [~~commission~~] a written emergency response plan. The plan shall address spills and releases, fires, explosions, loss of electricity, and loss of telecommunication services. The plan shall describe the storage facility's emergency response communication system, procedures for coordination of emergency communication and response activities with local emergency planning committees and other local authorities, use of warning systems, procedures for citizen and employee emergency notification and evacuation, and employee training. The initial plan must be designed based upon the existing safety measures at the facility. The plan shall be updated as changes in safety features at the facility occur, or as the Commission [~~commission~~] or its designee requires. The plan shall include a plat of the facility that shows the location of wells, processing areas, loading racks, brine pits, and other significant features at the site. A copy of the plan shall be provided to the local emergency response planning committee and to any other local governmental entity that submits a written request for a copy of the plan to the operator. Copies of the plan shall also be available at the storage facility and at the company headquarters.

(9) Notification of emergency or uncontrolled release.

(A) (No change.)

(B) Commission. The operator shall report to the appropriate Commission [~~commission~~] district office as soon as practicable any emergency, significant loss of fluids, significant mechanical failure, or other problem that increases the potential for an uncontrolled release. The operator shall file with the Commission within 30 days of the incident a written report on the root cause of the incident. The operator shall file with the Commission within 90 days of the incident a written report that describes the operational changes, if any, that have been or will be implemented to reduce the likelihood of a recurrence of a similar incident. An operator may request that the Commission grant, for good cause, an additional 30 days to file a written report on the root cause of the incident [~~confirm the report in writing within five working days~~].

(10) Public education. Each [~~Within six months of the effective date of this section, each~~] facility operator shall establish a continuing educational program to inform residents within a one-mile radius of a hydrocarbon storage facility of emergency notification and evacuation procedures.

(11) Annual emergency drill. Annually, each operator shall conduct a drill that tests response to a simulated emergency. Written notice of the drill shall be provided to the appropriate Commission [~~commission~~] district office, the county emergency management coordinator, and the county sheriff's office at least seven days prior to the drill. Local emergency response authorities shall be invited to participate in all such drills. The operator shall file a written evaluation of the drill and plans for improvements with the appropriate district office and the county emergency management coordinator within 30 days after the date of the drill.

(12) Employee safety training.

(A) Each [~~Within six months of the effective date of this section, each~~] operator shall prepare and implement a plan to train and test each employee at each underground hydrocarbon storage facility on operational safety to the extent applicable to the employee's duties and responsibilities. The facility's emergency response plan shall be included in the training program.

(B) (No change.)

(13) Warning systems and alarms.

(A) All [~~Within two years of the effective date of this section, all~~] leak detectors, fire detectors, heat sensors, pressure sensors, and emergency shutdown instrumentation shall be integrated with warning systems that are audible and visible in the local control room and at any remote control center. The circuitry shall be designed so that failure of a detector or heat sensor, excluding meltdown and fused devices, to function will activate the warning.

(B) A manually operated alarm shall be installed at each attended storage facility [~~within two years of the effective date of this section~~]. The alarm shall be audible in areas of the facility where personnel are normally located.

(14) Wind socks. At [~~Within one year of the effective date of this section, at~~] least one wind sock that is visible at any time from any normal work location within the storage facility shall be installed at the facility.

(15) Barriers. Barriers [~~Within one year of the effective date of this section, barriers~~] designed to prevent unintended impact by vehicles and equipment shall be placed around above-grade hydrocarbon piping, hydrocarbon process equipment, and surface hydrocarbon storage vessels in areas where vehicles may normally be expected to travel or within 100 feet of a public road.

(16) Wellhead, surface piping, and associated valves. All wellhead equipment, product, fresh water, and brine surface piping, and associated valves shall be designed, installed, and operated in accordance with engineering standards to the expected service conditions to which the piping and equipment will be subjected.

(i) Cavern capacity and configuration.

(1) - (3) (No change.)

(4) Bedded salt. The configuration of the roof of each hydrocarbon storage cavern in bedded salt shall be determined by downhole log or an alternate method approved by the Commission [~~commission~~] or its designee at least once every five years.

(5) Filing results. Sonar and roof monitoring survey results shall be filed with the Commission [~~commission~~] within 30 days after the survey.

(6) Out-of-service caverns. A sonar or roof monitoring survey is not required for a cavern that is out of service. A sonar or roof monitoring survey shall be performed before any cavern that has been out of service is returned to service, unless the provisions of paragraph (2) of this subsection apply .

(j) Well completion, casing, and cementing. Hydrocarbon storage wells shall be cased and the casing strings cemented to prevent fluids from escaping to the surface or into fresh water strata, or otherwise escaping and causing waste or endangering public safety or the environment.

(1) (No change.)

(2) Well completion report. A well completion report shall be filed in accordance with the instructions on the form prescribed by the Commission [~~commission~~] within 30 days after a storage well is completed and before solution mining to create the cavern begins.

(k) Operating requirements.

(1) Operating pressure. The operating pressure of each hydrocarbon storage well shall not exceed the permitted maximum allowable operating pressure for that well. The permitted maximum allowable operating pressure is that pressure specified in the Commission [~~commission~~] permit or order, or, if not specified in the permit or order, that pressure stated in the application or the application for amendment to a permit or order. The maximum operating pressure at the shoe of the lowermost cemented casing shall not exceed 0.8 pounds per square inch per foot of depth.

(2) Volume of hydrocarbons stored. The quantity of hydrocarbons stored in a cavern shall not exceed the permitted maximum storage volume for that cavern. The permitted maximum hydrocarbon storage volume is that volume specified in the Commission [~~commission~~] permit or order, or, if not specified in the permit or order, that volume stated in the application or the application for amendment to a permit or order.

(l) Monitoring requirements.

(1) - (2) (No change.)

(3) Volumes injected and withdrawn. The volume of hydrocarbons injected into and withdrawn from each hydrocarbon storage well shall be measured by:

(A) flow meter for each well; or

(B) an alternate method approved by the Commission [~~commission~~] or its designee.

(4) (No change.)

(5) Data recording. Within three years of the effective date of this section, operators shall have installed and have functioning equipment to electronically record all liquid and gas pressures, volumes, and flow rates at a frequency of at least once per minute, and all actuations of the emergency shutdown valve.

(m) Reporting. The operator shall report maximum wellhead pressures on the hydrocarbon and brine sides of each hydrocarbon storage well and the net volumes of hydrocarbons injected into and withdrawn from each hydrocarbon storage well in accordance with the instructions on the annual report form prescribed by the Commission [~~commission~~].

(n) Operations, construction, and maintenance records [~~Records~~] retention.

(1) Hydrocarbon injection and withdrawal data. The operator shall retain for at least three months all electronic [~~five years~~] records of hydrocarbon storage well pressures, flow rates, and hydrocarbon volumes [~~interface levels (if any), hydrocarbons~~] injected into and withdrawn from each well, and the hydrocarbon inventory of each cavern. The operator shall retain for at least five years the records, reported to the Commission under subsection (m) of this section, of maximum monthly wellhead pressures on the hydrocarbon and brine sides of each hydrocarbon storage well and the monthly net volumes of hydrocarbons injected into and withdrawn from each hydrocarbon storage well.

(2) Records retention. The operator shall retain for at least five years the records of measurement performance under subsection (l)(4) of this section; and testing of safety devices under subsection (h) of this section. Records of any test of a safety device required under subsection (h) of this section shall be available for on-site inspection within 10 days of the date of the test.

(3) [~~(2)~~] Construction and maintenance [~~Equipment~~] data. The operator shall retain for the life of the facility [~~five years~~] documents and records pertaining to the drilling, mining, completion, major repairs, and workovers of storage wells and testing of storage well integrity, and shall transfer all such documents and records to any new owner and/or new operator of the facility. [~~installation, inspection, maintenance, and testing of equipment required under subsections (h) and (l) of this section. Records of any test of a safety device required under subsection (h) of this section shall be available for on-site inspection within 10 days of the date of the test.~~]

(4) [~~(3)~~] Extension during investigation. Any documents or records that contain information pertinent to the resolution of any pending regulatory enforcement proceeding shall be retained beyond the prescribed retention [~~five-year~~] period until the resolution of such proceeding.

(o) Testing and maintenance.

(1) Integrity tests for wells in salt domes with a single casing string. Each hydrocarbon storage well drilled into a salt dome and having a single casing string cemented to the surface shall have the casing inspected by mechanical, ultrasonic, or magnetic methods at least once every five years and after each workover that involves physical changes to the cemented casing string.

(2) [~~(1)~~] Integrity tests for wells other than those in salt domes with a single casing string. Each hydrocarbon storage well shall be tested for integrity prior to being placed into service, at least once every five years, and after each workover that involves physical changes to any cemented casing string. The following requirements apply to all such integrity tests.

(A) A hydrocarbon storage well shall be tested for integrity by the nitrogen-brine interface method or an alternative approved by the Commission [~~commission~~], or its designee.

(B) A test procedure shall be filed with the Commission [~~commission~~] for approval at least 10 days before the test date.

(C) The operator shall notify the district office at least five days prior to conducting any integrity test.

(D) A complete record of each integrity test shall be filed in duplicate with the district office within 30 days after testing is completed. The record shall include a chronology of the test, copies of all downhole logs, storage well completion information, pressure readings, volume measurements, temperature logs and readings, and an explanation of the test results that addresses the precision of the test in terms of a calculated leak rate.

(E) Storage well pressures shall be allowed to stabilize to a rate of change of less than 10 psi in 24 hours before the testing period begins.

(3) Storage wellhead. Storage wellhead components, including spool pieces, shall be inspected and pressure tested to 125 percent of the permitted maximum allowable operating pressure at least once every 10 years. The operator may request a five-year extension from the Commission for good cause.

(4) Product, fresh water, and brine surface piping. Within one year of the effective date of this section, the operator shall submit a piping integrity management plan for approval by the Commission or its designee. Within three years of the effective date of this section, or in conjunction with the storage well integrity testing, all product, freshwater, and brine surface piping shall be maintained according to the facility's piping integrity management plan.

(5) [~~(2)~~] Alternative monitoring. An operator may request the Commission [~~commission~~] or its designee to approve storage well pressure monitoring as an alternative to integrity testing for hydrocarbon storage wells that are out of storage service. An out-of-service storage well must be tested for integrity according to the procedures specified in paragraph (2) [~~(1)~~] of this subsection before it may be returned to storage service.

(p) Plugging.

(1) Plug on abandonment. A hydrocarbon storage well shall be plugged upon permanent abandonment in a manner approved by the Commission [~~commission~~] or its designee. A proposal for plugging shall be submitted to the Commission [~~commission~~] in Austin for approval or modification prior to plugging. Following approval of a plugging plan, the operator shall file a notification of intent to plug at least five days prior to commencement of plugging operations. A plugging report shall be filed with the Commission [~~commission~~] in Austin within 30 days after plugging.

(2) Alternative monitoring. As an alternative to plugging a hydrocarbon storage well that has been permanently deactivated, an operator may request approval by the Commission [~~commission~~] or its designee of a plan to convert the storage well to a monitor well. A pressure monitoring plan must be submitted to the Commission [~~commission~~] along with the request to convert the storage well to a monitoring well.

(q) Penalties.

(1) Penalties. Violations of this section may subject the operator to penalties and remedies specified in the Texas Natural Resources Code, Titles 3 and 11, and other statutes administered by the Commission [~~commission~~].

(2) (No change.)

(r) Applicability of other Commission [~~commission~~] rules and orders. The owner or operator of an underground hydrocarbon storage facility is not relieved by this section of compliance with any other requirement of Chapters 3, 4, 7, or 8 of this title (relating to Oil and Gas Division; Environmental Protection; Gas Services Division; or Pipeline Safety Regulations).

§3.97. Underground Storage of Gas in Salt Formations.

(a) Definitions. The following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Emergency shutdown valve--A valve that automatically closes to isolate a gas storage wellhead [~~well~~] from surface piping in the event of specified conditions that, if uncontrolled, may cause an emergency.

(5) (No change.)

(6) Gas storage well or storage well--A well, including the storage wellhead, casing, tubing, borehole, and cavern used for the injection or withdrawal of natural gas or any other gaseous substance into or out of an underground gas storage facility.

(7) Leak or fire detector--A device capable of detecting by chemical or physical means the presence of gas [~~hydrocarbon vapor~~] or the escape of gas or the presence of flame or heat of a fire [~~vapor through a small opening~~].

(8) Operator--The person recognized by the Commission [~~commission~~] as being responsible for the physical operation of an underground gas storage facility, or such person's authorized representative.

(9) Owner--The person recognized by the Commission [~~commission~~] as owning all or part of an underground gas storage facility, or such person's authorized representative.

(10) - (11) (No change.)

(12) Storage wellhead--Equipment installed at the surface of the wellbore, including the casinghead and tubing head, spools, block or wing valves, and instrument flanges. Spool pieces must have a length less than six feet to be considered a part of the storage wellhead.

(13) Surface piping--Any pipe within a storage facility that is directly connected to a storage well, outboard of the wellhead emergency shutdown valve and used to transport gas, brine, or fresh water to or from a storage well whether such pipe is above or below ground level.

(14) [~~(12)~~] Underground gas storage facility or storage facility--A facility used for the storage of natural gas or any other gaseous substance in an underground salt formation, including surface and subsurface rights, appurtenances, and improvements necessary for the operation of the facility.

(b) Permit required.

(1) General. No person may create, operate, or maintain an underground gas storage facility without obtaining a permit from the Commission [~~commission~~]. A permit issued by the Commission [~~commission~~] for such activities before the effective date of this section shall continue in effect until revoked, modified, or suspended by the Commission [~~commission~~], or until it expires according to its terms. The provisions of this section apply to permits to conduct gas storage operations issued prior to the effective date of this section, except as otherwise specifically provided.

(2) Conflict with other requirements. If a provision of this section conflicts with any provision or term of a Commission [~~commission~~] order, field rule, or permit, the provision of such order, field rule, or permit shall control.

(c) Application.

(1) Information required. An application for a permit to create, operate, or maintain an underground gas storage facility shall be filed with the Commission [~~commission~~] by the owner or operator, or the proposed owner or operator, on the prescribed form. The application shall contain the information necessary to demonstrate compliance with applicable state laws and Commission [~~commission~~] regulations.

(2) Permit amendment. An application for amendment of an existing underground gas storage facility permit shall be filed with the Commission [~~commission~~]:

(A) - (E) (No change.)

(3) Increase in capacity. The owner or operator of a storage facility shall notify the Commission [~~commission~~] if information indicates that the capacity of a cavern exceeds the permitted cavern capacity by 20% or more. Such notification shall be made in writing to the Commission [~~commission~~] within 10 days of the date that the owner or operator of the storage facility knows or has reason to know that the cavern capacity exceeds the permitted capacity by 20% or more. The notification shall include a description of the information that indicates that the permitted cavern capacity has been exceeded, and an estimate of the current cavern capacity. Upon receipt of such information, the Commission [~~commission~~] or its designee may take any one or more of the following actions:

(A) - (D) (No change.)

(d) Standards for underground storage zone.

(1) Geologic, construction, and operating performance [~~Impermeable salt formation~~]. An underground gas storage facility may be created, operated, or maintained only in an impermeable salt formation in a manner that will prevent waste of the stored gases, uncontrolled escape of gases, pollution of fresh water, and danger to life or property. This section does not authorize storage of liquid or liquefied hydrocarbons in an underground salt formation. A permit under §3.95 of this title (relating to Underground Storage of Liquid or Liquefied Hydrocarbons in Salt Formations) is required to convert from storage of natural gas to storage of liquid or liquefied hydrocarbons in an underground salt formation.

(2) (No change.)

(e) Notice and hearing.

(1) Notice requirements. [~~Such notice shall be given no later than the date the application is mailed to or filed with the commission.~~] The applicant shall, no later than the date the application is mailed to or filed with the Commission, give notice of an application for a permit to create, operate, or maintain an underground hydrocarbon storage facility, or to amend an existing storage facility permit, by mailing or delivering a copy of the application form to:

(A) - (F) (No change.)

(2) Publication of notice. Notice of the application, in a form approved by the Commission [~~commission~~] or its designee, shall be published by the applicant once a week for three consecutive weeks in a newspaper of general circulation in the county where the storage facility is or is proposed to be located. The applicant shall file proof

of publication prior to any hearing on the application or administrative approval of the application.

(3) Notice by publication. The applicant shall make diligent efforts to ascertain the name and address of each person identified under paragraph (1)(A) - (D) of this subsection. The exercise of diligent efforts to ascertain names and addresses of such persons shall require an examination of the county records where [~~here~~] the facility is located and an investigation of any other information of which the applicant has actual knowledge. If, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (1)(A) - (D) of this subsection, the notice requirements for those persons are satisfied by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the Commission [~~commission~~] specifying the efforts that were taken to identify each person whose name and/or address could not be ascertained.

(4) Hearing required for new permits. A permit application for a new underground gas storage facility will be considered for approval only after notice and hearing. The Commission [~~commission~~] will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the Commission [~~commission~~].

(5) Hearing on permit amendments.

(A) An application for an amendment to an existing storage facility permit may be approved administratively if the Commission [~~commission~~] receives no protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person.

(B) If the Commission [~~commission~~] receives a protest from a person notified pursuant to paragraph (1) of this subsection or from any other affected person within 15 days of the date of receipt of the application by the Commission [~~commission~~], or of the date of the third publication, whichever is later, or if the Commission [~~commission~~] determines that a hearing is in the public interest, then the applicant will be notified that the application cannot be approved administratively. The Commission [~~commission~~] will schedule a hearing on the application upon written request of the applicant. The Commission [~~commission~~] will give notice of the hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After hearing, the examiner shall recommend a final action by the Commission [~~commission~~].

(C) If the application is administratively denied, a hearing will be scheduled upon written request of the applicant. After hearing, the examiner shall recommend a final action by the Commission [~~commission~~].

(f) Modification, cancellation, or suspension of a permit.

(1) General. Any permit may be modified, suspended, or canceled after notice and opportunity for hearing if:

(A) a material change in conditions has occurred in the operation, maintenance, or construction of the storage facility, or there are material deviations from the information originally furnished to the Commission [~~commission~~]. A change in conditions at a facility that does not affect the safe operation of the facility or the ability of the facility to operate without causing waste of hydrocarbons or pollution is not considered to be material;

(B) (No change.)

(C) there are material violations of the terms and provisions of the permit or Commission [~~commission~~] regulations;

(D) - (E) (No change.)

(2) Imminent danger. Notwithstanding the provisions of paragraph (1) of this subsection, in the event of an emergency that presents an imminent danger to life or property, or where waste of hydrocarbons, uncontrolled escape of hydrocarbons, or pollution of fresh water is imminent, the Commission [~~commission~~] or its designee may immediately suspend a storage facility permit until a final order is issued pursuant to a hearing, if any, conducted in accordance with the provisions of paragraph (1) of this subsection. All operations at the facility shall cease upon suspension of a permit under this paragraph.

(g) Transfer of permit. A storage facility permit may not be transferred without the prior approval of the Commission [~~commission~~], or its designee. Until such transfer is approved by the Commission [~~commission~~] or its designee, the proposed transferee may not conduct any activities authorized by the permit. The following procedure shall be followed when requesting approval for transfer of a permit.

(1) Request. Prior to transferring either ownership or operation of a storage facility, the permittee shall file with the Commission [~~commission~~] a request for transfer of the permit. Such a request may not be filed unless a completed Form P-4, signed by both the permittee and the proposed transferee, has been filed with the Commission [~~commission~~].

(2) Approval. The Commission [~~commission~~], or its designee, shall approve the transfer of a storage facility permit, provided:

(A) the proposed transferee is not the subject of any unsatisfied Commission [~~commission~~] enforcement order at the time of the request for permit transfer; and

(B) there are no existing violations of any Commission [~~commission~~] regulation, order, or permit at the storage facility at the time of the request for permit transfer that have been documented by the Commission [~~commission~~], or its employees, unless the proposed transferee agrees to correct the violations according to a compliance schedule approved by the Commission [~~commission~~], or its designee.

(3) Good cause. Notwithstanding paragraph (2) of this subsection, for good cause shown the Commission [~~commission~~], or its designee, may require public notice and opportunity for hearing prior to taking action on a request for transfer of a permit. Such request may be denied after notice and opportunity for hearing if the Commission [~~commission~~] or its designee finds that transfer of the permit would not be in the public interest.

(h) Safety. The following safety requirements shall apply to all underground gas storage facilities, provided [~~. Provided~~], however, that the provisions of this subsection shall not apply to any natural gas storage well that is out of service and disconnected from surface piping. Notwithstanding the compliance time periods specified in this subsection, a new underground gas storage facility permitted under this section must have all required safety measures and equipment in place before commencement of storage operations at the facility. All existing storage facilities must have such safety measures and equipment in place within the period of time specified. Notwithstanding the compliance time periods specified in paragraph (2)(B) of this subsection, no storage well in active service may be operated without a fully functional emergency shutdown valve unless in compliance with specified conditions of paragraph (2)(C) of this subsection.

(1) (No change.)

(2) Storage wellhead [~~Emergency shutdown valves~~].

(A) The storage wellhead must be designed, operated, and maintained to contain the contents of the storage well and protect against loss of stored product.

(B) [~~(A)~~] Either within three [~~Within two~~] years of the effective date of this section, or in conjunction with the next integrity test of the storage well, the operator shall have installed emergency shutdown valves between the wellhead and [~~shall be installed on~~] the gas injection/withdrawal surface piping of each storage well and between the wellhead and [~~on~~] any brine or fresh water surface piping [~~that is connected at the wellhead~~]. Within one year of the effective date of this section, the [~~An~~] operator may request an exception to the storage wellhead configuration or compliance date of this subparagraph and propose an alternative configuration or workover schedule for approval by the Commission [~~commission,~~] or its designee. A storage well that is out of service and is disconnected from surface piping shall be exempt from this requirement until reactivated for active gas storage. Emergency shutdown valves shall meet the following requirements: [~~.~~]

(i) Each emergency shutdown valve shall be capable of activation at each storage well, at the on-site control center if one exists, at the remote control center if one exists, and at a location that is reasonably anticipated to be accessible to emergency response personnel at any facility that does not have an on-site control center that is attended 24 hours per day.

(ii) Each emergency shutdown valve shall be an automatic fail-closed valve that automatically closes when there is a loss of pneumatic or hydraulic pressure on, or power to, the valve or when the maximum operating pressure under subsection (k) of this section is exceeded.

(iii) Each emergency shutdown valve shall be closed and opened at least monthly.

(iv) Each emergency shutdown valve system shall be tested at least twice each calendar year at intervals not to exceed 7 1/2 months. The test shall consist of activating the actuation devices, checking the warning system, and observing the valve closure.

(C) [~~(B)~~] If an emergency shutdown valve system fails to operate as required, the well shall be immediately shut in until repairs are completed, unless:

(i) a backup emergency shutdown valve is in operation on the same piping; or

(ii) an attendant is posted at the well site to provide immediate manual shut-in.

(3) Gas, brine, and fresh water surface piping.

(A) Gas surface piping shall be designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well. For facilities with hazardous materials surface piping under the administrative authority of the Safety Division of the Railroad Commission of Texas, for the purposes of this section, gas surface piping extends from the wellhead emergency shutdown valve to the first pressure regulation device, including a manual, motor-operated, or emergency shutdown valve.

(B) Brine piping, if any, shall be designed for the maximum brine wellhead pressure and to transport, under emergency conditions, gas to a gas control system if the operator is solution mining while the gas storage well is in active storage service, unless:

(i) a secondary emergency shutdown valve is in operation on the brine surface piping; and

(ii) the brine surface piping between the wellhead emergency shutdown valve and the secondary emergency shutdown valve is designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well.

(C) Fresh water surface piping, if any, must be equipped with an emergency shutdown valve unless it is:

(i) disconnected from the wellhead; or

(ii) connected to the brine surface piping outboard of the wellhead emergency shutdown valve; or

(iii) designed for the maximum allowable operating pressure on the hydrocarbon side of the well; and has an internal diameter of less than or equal to two inches; and an attendant is posted at the well site to provide immediate manual shut-in when in use.

(D) Fresh water piping designed for the permitted maximum allowable operating pressure on the hydrocarbon side of the well and with an internal diameter of less than or equal to two inches, is exempt from the requirement that an emergency shutdown valve be separated from the wellhead by a spool no longer than six feet.

(4) [~~(3)~~] Cavern debrining and solution mining operations.

(A) Within one year of the effective date of this section, each storage well shall have two [~~one~~] or more of the following redundant devices or methods in operation during cavern debrining operations or during solution mining operations that are conducted with gas in storage in the same cavern. [~~Within two years from the effective date of this section, each storage well shall have two or more of the following devices or methods in operation during cavern debrining operations or during solution mining operations that are conducted in a cavern with gas in storage in the same cavern.~~] These devices are designed to prevent the release of gas into the brine and fresh water systems connected to the well during cavern debrining operations or during solution mining operations that are conducted with gas in storage in the same cavern. Gas release prevention shall consist of at least two of the following redundant devices or methods:

(i) emergency shutdown valves equipped with pressure sensor switches or transducers set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to preset pressures on the brine and fresh water piping of the well;

(ii) weep hole(s) on the brine return string in conjunction with a preset pressure sensor switch or transducer on the brine piping that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to a preset pressure;

(iii) a device on the brine return string or brine piping that detects hydrocarbon in the brine by physical or chemical characteristics and that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to hydrocarbon detection;

(iv) an instrument that detects a rapid increase in the brine flow rate indicative of hydrocarbon in the brine and that is set to automatically close emergency shutdown valves on the brine side of the wellhead and on the fresh water piping, if any, in response to a preset flow rate or differential flow rate; or

(v) an alternative device or method approved by the Commission [~~commission~~].

(B) Solution mining of a cavern may occur while gas is in storage, provided that the injection of fresh water and the injection of gas do not occur simultaneously within the same cavern.

(5) [~~(4)~~] Leak or fire detectors.

(A) Within two years of the effective date of this section, a leak or fire detector shall be installed and in operation at each gas storage well and each structurally enclosed compressor site [~~that is 100 yards or less from a residence, commercial establishment, church, school, or small, well-defined outside area, and at each structurally enclosed compressor site. For purposes of this section, the term "small, well-defined outside area" means an area such as a playground, recreation area, outdoor theater, or other place of public assembly that is occupied by 20 or more persons on at least five days a week for 10 weeks in any 12-month period. The days and weeks need not be consecutive~~].

(B) Leak or fire detectors shall be tested twice each calendar year at intervals not to exceed 7 1/2 months, and, when defective, repaired or replaced within 10 days. Leak or fire detectors shall be integrated with warning systems required in paragraph (6)(A) [~~(5)(A)~~] of this subsection.

(6) [~~(5)~~] Warning systems and alarms.

(A) Within two years of the effective date of this section, all leak or fire detectors and [~~pressure~~] sensors or methods that actuate the emergency shutdown valve shall be integrated with warning systems that are audible and visible in the control room and at any remote control center. The circuitry shall be designed so that failure of a leak or fire detector to function will activate the warning.

(B) A manually operated audible alarm shall be installed at each attended storage facility [~~within 180 days of the effective date of this section~~]. The alarm shall be audible in areas of the facility where personnel are normally located.

(7) [~~(6)~~] Emergency response plan. Each [~~Within six months of the effective date of this section, each~~] storage facility shall submit to the Commission [~~commission~~] a written emergency response plan. The plan shall address gas releases, fires, explosions, loss of electricity, and loss of telecommunication services. The plan shall describe the facility's emergency response communication system, procedures for coordination of emergency communication and response activities with local authorities, use of warning systems, procedures for citizen and employee emergency notification and evacuation, and employee training. The plan shall also include a plat of the facility showing the locations of wells, processing areas, and other significant features at the facility. The initial plan must be designed based upon the existing safety measures at the facility. The plan shall be updated as changes in safety features at the facility occur, or as the Commission [~~commission~~] or its designee requires. A copy of the plan shall be provided to the local emergency response committee and to any other local governmental entity that submits a written request for a copy of the plan to the operator. Copies of the plan shall also be available at the storage facility and at the company headquarters.

(8) [~~(7)~~] Notification of emergency or uncontrolled release.

(A) Emergency response personnel. Each operator shall notify the county sheriff's office, the county emergency management coordinator, and any other appropriate public officials which are identified in the emergency response plan of any emergency that could endanger nearby residents or property. Such emergencies include, but are not limited to, an uncontrolled release of hydrocarbons from a storage well or a leak or fire at any area of the storage facility. The operator shall give notice as soon as practicable following the discovery of the emergency. At the time of the notice, the operator shall also report an assessment of the potential threat to the public.

(B) Commission. The operator shall report to the appropriate Commission [~~commission~~] district office as soon as practicable any emergency, significant loss of gas or fluids, significant mechanical failure, or other problem that increases the potential for an uncontrolled release. The operator shall file with the Commission within 30 days of the incident a written report on the root cause of the incident. Within 90 days of the incident, the operator shall file with the Commission a written report that describes the operational changes, if any, that have been or will be implemented to reduce the likelihood of a recurrence of a similar incident. An operator may request that the Commission grant, for good cause, an additional 30 days to file a written report on the root cause of the incident [~~confirm the report in writing within five working days~~].

(9) [~~(8)~~] Annual emergency drill. Annually, each operator shall conduct a drill that tests response to a simulated emergency. Written notice of the drill shall be provided to the appropriate Commission [~~commission~~] district office, the county emergency management coordinator, and the county sheriff's office at least seven days prior to the drill. Local emergency response authorities shall be invited to participate in all such drills. The operator shall file a written evaluation of the drill and plans for improvements with the appropriate district office and the county emergency management coordinator within 30 days after the date of the drill.

(10) [~~(9)~~] Employee safety training.

(A) Each [~~Within six months of the effective date of this section, each~~] operator shall prepare and implement a plan to train and test each employee at each underground gas storage facility on operational safety to the extent applicable to the employee's duties and responsibilities. The facility's emergency response plan shall be included in the training program.

(B) Each operator shall hold a safety meeting with each contractor prior to the commencement of any new contract work at an underground gas storage facility. Emergency measures, including safety and evacuation measures specific to the contractor's work, shall be explained in the contractor safety meeting.

(11) Fire suppression capability.

(A) Within three years of the effective date of this section, each operator shall have fire suppression capability designed to aid in personnel rescue and equipment protection and cooling.

(B) Within one year of the effective date of this section, the operator may request an exception to the schedule or fire suppression requirement of this paragraph and propose an alternative schedule or means of protection from wellhead fire for approval of the Commission or its designee.

(12) Wellhead, piping, and associated valves. All wellhead surface piping and associated valves shall be designed, installed, and operated in accordance with engineering standards to the expected service conditions to which the piping and equipment will be subjected.

(13) Barriers. Within one year of the effective date of this section, barriers designed to prevent unintended impact by vehicles and equipment shall be placed around above grade hydrocarbon piping, hydrocarbon process equipment where vehicles may normally be expected to travel, or within 100 feet of a public road.

(i) Cavern capacity and configuration.

(1) (No change.)

(2) Salt domes. The capacity and configuration of each salt dome gas storage cavern shall be determined by sonar survey before a cavern that has been out of service is returned to service, provided [~~. Provided~~], however, that a sonar survey shall not be required on a

cavern that is being returned to service if a sonar survey of that cavern has been run at any time during the previous 10 years.

(3) Bedded salt. The configuration of the roof of each gas storage cavern in bedded salt shall be determined by downhole log or an alternate method approved by the Commission [~~commission~~], or its designee, at least once every five years.

(4) Filing of results. Sonar and roof monitoring survey results shall be filed with the Commission [~~commission~~] within 30 days after the survey.

(5) Out-of-service caverns. A sonar or roof monitoring survey is not required for a cavern that is out of service. A sonar or roof monitoring survey shall be performed before any such cavern that has been out of service is returned to service, unless the provisions of paragraph (2) of this subsection apply .

(6) (No change.)

(j) Well completion, casing, and cementing. Gas storage wells shall be cased and the casing strings cemented to prevent gases from escaping to the surface or into fresh water strata, or otherwise escaping and causing waste or endangering public safety or the environment.

(1) (No change.)

(2) Well completion report. A well completion report shall be filed in accordance with the instructions on the form prescribed by the Commission [~~commission~~] within 30 days after a storage well is completed and before solution mining to create the cavern begins.

(k) Operating pressure.

(1) Not to exceed maximum. The operating pressure of each gas storage well shall not exceed the permitted maximum allowable operating pressure for that well. The permitted maximum allowable operating pressure is that pressure specified in the Commission [~~commission~~] permit or order, or, if not specified in the permit or order, that pressure stated in the application or the application for amendment to a permit or order.

(2) (No change.)

(l) Monitoring requirements.

(1) Gas pressure. Gas pressure on the injection/withdrawal casing or tubing or piping connected thereto shall be equipped with a pressure sensor to continuously monitor the wellhead pressure. Pressure sensors shall be integrated electronically with the warning systems, [~~and~~] alarms, and emergency shutdown valve actuation system as required in subsection (h)(2)(B) and (h)(6)(A) [~~(h)(5)(A)~~] of this section.

(2) (No change.)

(3) Volumes injected and withdrawn. The volume of gas injected into and withdrawn from each storage well shall be determined:

(A) by flow meter [~~volume data from the master meter and records of pressure change~~] for each well; or

(B) by an alternate method approved by the Commission [~~commission~~].

(4) (No change.)

(5) Data recording. Within three years of the effective date of this section, operators shall have installed and have functioning equipment to electronically record all liquid and gas pressures and injection volumes and rates at a frequency of at least once per minute, and all actuations of the emergency shutdown valve.

(m) Reporting.

(1) Monthly reports. On or before the last day of each month, the operator of each facility that stores gas to supply a public utility shall file with the Commission [~~commission~~] a report showing the volume of gas placed into storage and the volume of gas removed from storage at the storage facility, during the preceding month. The report shall also state the total volume of gas in storage on the first and last days of the preceding month. This report shall be filed in a format acceptable to the Commission [~~commission~~] or its designee.

(2) Annual reports. The operator shall file annually a status report for each storage well in accordance with the instructions on the form prescribed by the Commission [~~commission~~].

(n) Operations, construction, and maintenance records [~~Records~~] retention.

(1) Operations [~~Gas injection and withdrawal~~] data. The operator shall retain for at least three months all electronic [~~five years~~] records of storage well pressures, volumes of gases injected and withdrawn, and the inventory of gas in storage. The operator shall retain for at least five years the records reported to the Commission under subsection (m).

(2) Records retention. The operator shall retain for at least five years the records of measurement performance under subsection (l)(4) of this section; and testing of safety devices under subsection (h) of this section. Records of any test of a safety device required under subsection (h) of this section shall be available for on-site inspection within 10 days of the date of the test.

(3) [~~(2)~~] Construction and maintenance [~~Equipment~~] data. The operator shall retain for the life of the facility [~~five years~~] documents and records pertaining to the drilling, mining, completion, repair and workover of storage wells and the testing of storage well integrity, and shall transfer all such documents and records to any new owner and/or new operator of the facility [~~installation, inspection, maintenance, and testing of equipment relating to the safe operation of the storage facility~~].

(4) [~~(3)~~] Extension during investigation. The operator shall retain beyond the prescribed retention period any documents or records that contain operational data pertaining to the resolution of any pending regulatory enforcement proceedings until the resolution of such proceedings. [~~Any documents or records that contain information pertinent to the resolution of any pending regulatory enforcement proceeding shall be retained beyond the five-year period until the resolution of such proceeding.~~]

(o) Testing and maintenance.

(1) Integrity tests. Each gas storage well shall be tested for integrity prior to being placed into service, at least once every five years, and after each workover that involves physical changes to any cemented casing string. The following requirements apply to such integrity tests.

(A) A test procedure shall be filed with the Commission [~~commission~~] for approval at least 10 days before the test date.

(B) The initial test conducted on a well prior to placing it into service shall be performed using the nitrogen-interface test method or an alternative method approved by the Commission [~~commission,~~] or its designee.

(C) - (E) (No change.)

(2) Alternative monitoring. An operator may request the Commission [~~commission~~] or its designee to approve well pressure monitoring as an alternative to integrity testing for storage wells that

are out of gas storage service. An out-of-service well shall be tested for integrity by the nitrogen-interface method before it may be returned to storage service.

(3) Storage wellhead. Storage wellhead components, including spool pieces, shall be inspected and pressure tested to 125 percent of the permitted maximum allowable operating pressure at least once every 15 years. The operator may request a five-year extension from the Commission for good cause.

(4) Fresh water, brine, and gas surface piping. Within one year of the effective date of this section, the operator shall submit a piping integrity management plan for approval by the Commission or its designee. Within three years of the effective date of this section, or in conjunction with the storage well integrity testing, all gas, freshwater, and brine surface piping shall be maintained according to the facility's piping integrity management plan.

(p) Plugging.

(1) Plug on abandonment. A gas storage well shall be plugged upon permanent abandonment in a manner approved by the Commission [~~commission~~] or its designee. A proposal for plugging shall be submitted to the Commission [~~commission~~] in Austin for approval or modification prior to plugging. Following approval of a plugging plan, the operator shall file notification of intent to plug at least five days prior to commencement of plugging operations. A plugging report shall be filed with the Commission [~~commission~~] within 30 days after plugging.

(2) Alternative monitoring. As an alternative to plugging a gas storage well that has been permanently deactivated, an operator may request approval by the Commission [~~commission~~] or its designee of a plan to convert the well to a monitor well. A pressure monitoring plan must be submitted to the Commission [~~commission~~] along with the request to convert the well to a monitoring well.

(q) Penalties.

(1) Penalties. Violations of this section may subject the operator to penalties and remedies specified in Texas Natural Resources Code, Title 3; Texas Utilities Code, Chapter 121 [~~Texas Civil Statutes, Article 6053-3~~]; and other statutes administered by the Commission [~~commission~~].

(2) (No change.)

(r) Applicability of other Commission [~~commission~~] rules and orders. The owner or operator of an underground gas storage facility is not relieved by this section of compliance with any other requirement of Chapters 3, 4, 7, or 8 of this title (relating to Oil and Gas Division; Environmental Protection; Gas Services Division; or Pipeline Safety Regulations).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603627
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.2

The Texas Structural Pest Control Board proposes an amendment to §593.2, concerning License Application. The proposal will allow the Board to consider any enforcement actions taken against an individual prior to issuing a license while this individual was licensed by another state, Indian tribe or federal agency.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Walton has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that individuals who possess an enforcement history in other states will be prevented from moving to Texas and operating. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§593.2. License Application.

(a) - (b) (No change.)

(c) An individual will not be issued a license from the Texas Structural Pest Control Board if the individual possessed a license permitting the application of general or restricted use pesticides issued by another state agency, Indian Tribe, or federal agency in the preceding twelve month period that if the individual's license has been revoked, suspended, probated or refused or has been subject to enforcement action that would result in the Texas Structural Pest Control Board denying licensure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603647

Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 305-8270

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22 TAC §593.21

The Texas Structural Pest Control Board proposes an amendment to §593.21, concerning Technician License Requirements. The proposal will change the annual training requirement from an original certification cycle to a calendar year cycle. No training will be required during the first calendar year in which a person becomes licensed as a technician.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect their costs, only their renewal date.

There is no cost comparison for small or large businesses since the rule proposal does not affect their costs, only their renewal date.

Mr. Walton has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated will be that licensees will be on a calendar schedule, not a certification schedule. This will result in fewer training and renewal problems for licensees. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§593.21. Technician License Requirements.

(a) - (m) (No change.)

(n) The Board shall require as a condition to the renewal of each commercial or non-commercial technician's license granted pursuant to the provisions of this section, the responsible certified applicator of record will certify on the verifiable training records form that the technician has completed eight (8) hours of verifiable training for the preceding calendar year running from January 1 to December 31 preceding [~~(12) twelve months of~~] the renewal date except that no additional training will be required in the first calendar year in which a technician is first licensed . This certification must be verified upon each annual renewal of the technician license. Failure to do so will prevent the license from being issued. Licensees must obtain the appropriate number of verifiable training hours in the preceding [~~a~~] 12-month calendar year period. Changing employers or moving to an inactive status does not alleviate this responsibility or add time to the continuing education requirements.

(1) - (5) (No change.)

(o) - (q) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603649
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 305-8270

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22 TAC §593.23

The Texas Structural Pest Control Board proposes an amendment to §593.23, concerning Continuing Education Requirements for Certified Applicators. The proposal will change the annual Continuing Education Unit requirement from an original certification cycle to a calendar year cycle. No credits will be required during the first calendar year in which a person becomes licensed as a technician.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect their costs, only their renewal date.

There is no cost comparison for small or large businesses since the rule proposal does not affect their costs, only their renewal date.

Mr. Walton has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated will be that licensees will be on a calendar schedule, not a certification schedule. This will result in fewer training and renewal problems for licensees. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§593.23. Continuing Education Requirements for Certified Applicators.

(a) Except as provided in subsections (e) and (f) of this section, the Board shall require as a condition to the renewal of each certified applicator license granted pursuant to the provisions of this section, that the holder thereof certify to the Board that the licensee has completed courses of continuing education approved by the Board that cover the applicator's category(ies) of certification for the preceding calendar year running from January 1 to December 31 [~~twelve (12) months~~]. This certification must be completed [~~upon~~] each calendar year for renewal of the certified applicator's license. Failure to do so will prevent the license from being renewed. Licensees must obtain the appropriate number of continuing education units in each [~~a~~] 12-month calendar year period. Changing employers or moving to an inactive status does not alleviate this responsibility or add time to the continuing education unit requirement.

(b) - (d) (No change.)

(e) Applicators will not be required to obtain units during [~~for~~] the first year in which their license is issued. Applicators who become certified in additional categories during any calendar year [~~annual renewal~~] period will not be required to obtain units in those categories for that period.

(f) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603648
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 305-8270

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CHAPTER 595. COMPLIANCE AND ENFORCEMENT

22 TAC §595.4

The Texas Structural Pest Control Board proposes an amendment to §595.4, Pest Control Use Records. The proposal will simplify and offer licensees choices between recording product names or EPA registration numbers and alternative methods for reporting mixtures.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal only affects how the small business records data.

There is no cost comparison for small or large businesses since the rule proposal only affects how the small business or large records data.

Mr. Walton has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that licensees will have an easier time indicating the products used in an application. This will reduce the amount of paperwork to generated by licensees and the general public will still be informed. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§595.4. Pest Control Use Records.

(a) The business licensee or, in the case of the certified noncommercial applicator, the applicator must keep and maintain a correct and accurate record of all uses of pesticides and pest control devices registered with the United States Environmental Protection Agency and the Texas Department of Agriculture or approved by the Board under §599.1 of this title for a period of two (2) years. Said records must be kept on the premise of the business licensee or, in the case of a certified noncommercial applicator, the employer's premises. The records must include, but are not limited to: [~~, routine operational data, name and address of the customer, name of pesticides or devices used, total amounts of each pesticides or devices used, percent of active ingredient applied, purpose for which the pesticides or devices were used or target pest, date the pesticides or devices were used, service address where the pesticides and devices were used, and the name of the person(s) applying pesticides or using devices. If a physical device approved by the Board is used, the appropriate unit of measurement (square foot, cubic foot, or linear foot) of the physical device must be recorded and a diagram describing the installation will be provided. These records shall be made available to the Board or its authorized agents in accordance with the Texas Structural Pest Control Act.~~]

(1) routine operational data, name and address of the customer;

(2) name of pesticides or devices used or EPA registration number;

(3) total amounts of each pesticides as formulated by the manufacturer or devices used;

(4) for manufacturer's formulations that are mixed with water or other material, the mixing rate and total amount of material applied or the percent of active ingredient(s) and total amount of material applied;

(5) purpose for which the pesticides or devices were used or target pest;

(6) date the pesticides or devices were used;

(7) service address where the pesticides and devices were used, except that for utility pole re-treatments, records shall be kept for the location of each pole treated; and

(8) and the name of the person(s) applying pesticides or using devices

(b) If a physical device approved by the Board is used, the appropriate unit of measurement (square foot, cubic foot, or linear foot)

of the physical device must be recorded and a diagram describing the installation will be provided.

(c) These records shall be made available to the Board or its authorized agents in accordance with the Texas Structural Pest Control Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603650
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 305-8270

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22 TAC §595.6

The Texas Structural Pest Control Board proposes an amendment to §595.6, Pest Control Sign. The changes are in the graphic and incorporate the name change for National Pesticide Information Center.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Walton has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that correct name for matters relating to pesticide poisoning will be reflected in Board documents. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§595.6. Pest Control Sign.

(a) A pest control sign must be provided by the licensee to the owner or manager at least 48 hours prior to a planned indoor treatment at a residential rental property with five or more rental units.

(b) A pest control sign must be provided by the licensee to the employer or building manager at least 48 hours prior to a planned indoor treatment at a workplace. A workplace is defined as any non-residence with three or more full-time paid employees which is treated by a licensed business or a certified noncommercial applicator.

(c) A pest control sign must be provided by the licensee to the chief administrator or building manager at least 48 hours prior to a planned indoor treatment at a hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school or educational institution, or day-care center.

(d) An indoor treatment includes a perimeter treatment if the primary purpose of the treatment is to treat the interior of the structure.

(e) A person may not be considered in violation of this section if the space to be treated is vacant, unused and unoccupied at the time of treatment, or if extenuating circumstances require an unplanned treatment.

(f) Each pest control sign must be at least 8 1/2 inches by 11 inches in size and must contain the following information with the first line in a minimum of 24-point type (one-fourth inch) and all remaining lines in a minimum of 12-point type (one-eighth inch). The addition of advertising and logos to the Notice of Pest Control Treatment is permissible to the extent that such advertising does not interfere with the purpose of public notification of a pest control treatment. A standard sign in Spanish is available from the Board upon request. The sign should appear in the following format:
Figure: 22 TAC §595.6(f)

(g) In the space marked "For more information call or contact," the telephone number where information on the pesticide(s) used may be obtained must be listed, such as the apartment manager, building manager, or pest control operator.

(h) In the space marked "phone number of hotline for pesticide information," the following wording must be used: National Pesticide Information Center 1-800-858-7378.

(i) If a workplace has its own pesticide information center, the workplace center telephone number may be listed rather than the information in subsection (h) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603651
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 305-8270

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22 TAC §595.7

The Texas Structural Pest Control Board proposes an amendment to §595.7, concerning Consumer Information Sheet. The changes are in the graphic and incorporate the name change for National Pesticide Information Center.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase

in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Walton has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that correct name for matters relating to pesticide poisoning will be reflected in Board documents. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§595.7. Consumer Information Sheet.

(a) - (g) (No change.)

(h) The official Texas Structural Pest Control Board Consumer Information Sheet must be used. Copies of the Consumer Information Sheet are available from the Board in English and Spanish and must read as follows:
Figure: 22 TAC §595.7(h)

(i) (No change.)

(j) Licensees holding the lawn and ornamental or weed categories may use the following text in place of that required in subsection (h) of this section:
Figure: 22 TAC §595.7(j)

(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 10, 2006.

TRD-200603660
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 305-8270

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22 TAC §595.14

The Texas Structural Pest Control Board proposes an amendment to §595.14, concerning Reduced Impact Pest Control Service. The changes are in the graphic and incorporate the name change for National Pesticide Information Center.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Walton has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that correct name for matters relating to pesticide poisoning will be reflected in Board documents. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

§595.14. Reduced Impact Pest Control Service.

(a) - (e) (No change.)

(f) Licensees holding the Reduced Impact authorization and licensed in the lawn and ornamental or weed categories may use the following text in place of that required in §595.7.
Figure: 22 TAC §595.14(f)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603652
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 305-8270

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 73. LABORATORIES

25 TAC §73.21, §73.54

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), proposes amendments to §73.21, concerning newborn screening, and §73.54, concerning fees for clinical testing and newborn screening.

BACKGROUND AND PURPOSE

The amendments are authorized by Health and Safety Code, §§12.031, 12.032, and 12.0122 that allow the department to

charge fees to a person who receives public health services from the department, and which are necessary for the department to recover costs for performing laboratory services. The Texas Legislature, 79th Regular Session, amended Health and Safety Code, §33.011, mandating the expansion of newborn screening in Texas by November 1, 2006. This mandate will require a change in technology and increased costs for testing. The National Newborn Screening and Genetics Resource Center has also reviewed the department's newborn screening program and recommended that all first and second screens be linked. To facilitate this process the department proposes an alternate design for the specimen collection kit. This proposed kit will consist of two, bar-coded, quality controlled filter paper collection forms that are easily separated such that when the first specimen is collected, the remaining collection form and envelope will be given to the mother to take to the first doctor's visit for the collection of the second newborn screening blood specimen. The new fee for the two-screen specimen collection kits will include the cost of both the first and second screens.

SECTION-BY-SECTION SUMMARY

The proposed amendments include editorial changes to existing rules; new definitions; and a new fee. Section 73.21 contains new definitions for "screen", "specimen collection form", "specimen collection kits", and "replacement specimen collection forms". The definition for "test kit" was deleted, the references to "test kit(s)" are replaced with "specimen collection kit(s)"; and the references to "screening panel(s)" are replaced with "screen(s)". This section describes the department's criteria for charging fees for specimen collection kits. Section 73.54 includes a proposed new fee of $80 for a newborn screening specimen collection kit designed to link the first and second screens as defined in §73.21. The fee for a two-screen specimen collection kit is equal to the fee for two single screen specimen collection kits.

FISCAL NOTE

Dr. Susan Neill, Director, Laboratory Services Section has determined that for each year of the first five year period the sections are in effect, there will be no fiscal implications to the state as a result of administering the sections as proposed. There will be no effect on existing contracts with other state agencies. Increased costs to local governments cannot be determined at this time.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Neill has also determined that there are no anticipated costs to small businesses or micro-businesses (other than to those that submit specimens for testing) required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons (other than to those that submit specimens for testing) who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Dr. Neill has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be a more efficient way to link the first and second newborn screens for each child born in Texas.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be directed to Sherry S. Clay, Manager, Quality Control Unit, Laboratory Services Section, 1100 West 49th Street, Austin, Texas 78756-3199. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amended sections are proposed under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of the Health and Safety Code, Chapter 1001; Health and Safety Code, §33.004(b), which requires the department to implement the newborn screening program in accordance with rules adopted by the Executive Commissioner; §12.001, which provides the Executive Commissioner the authority to adopt rules for the performance of every duty imposed by law on the Executive Commissioner, department and commissioner; §12.031 and §12.032, which allow the Executive Commissioner to charge fees to a person who receives public health services from the department; §12.034, which requires the Executive Commissioner to establish collection procedures; §12.035, which requires the department to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of the Department of State Health Services public health service fee fund; and §12.0122, which allows the department to enter into a contract for laboratory services.

The proposed amendments affect the Health and Safety Code, Chapters 12, 33, and 1001; and Government Code, Chapter 531.

§73.21. Newborn Screening.

(a) Purpose. This section establishes procedures for the purchase and submission of newborn screening specimen collection [~~test~~] kits provided by the Department of State Health Services (department).

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Newborn Screening (NBS)--Newborn screening is a requirement of the Health and Safety Code, Chapter 33. Each screen consists of one or more tests to identify a newborn who may be at risk of having phenylketonuria, other heritable diseases, or hypothyroidism. [~~Each newborn must have two screening panels performed.~~] Additional screens [~~screening panels~~] may be necessary under certain circumstances.

(4) (No change.)

(5) Screen--One or more tests that identify an increased risk for a disorder, which must be confirmed by diagnostic tests. A screen may produce false positive or false negative results and should not be relied upon as "diagnostic."

[~~(5) Test kit--The department-designed collection device, demographic information form and envelope used to submit a newborn's blood specimens for screening by the department.~~]

(6) Specimen collection form--The specimen collection form consists of a patient demographic information sheet (original and carbonless copy) with an attached filter paper collection device.

(7) Specimen collection kits.

(A) Single screen specimen collection kit--a single department-approved bar-coded, quality controlled filter paper collection device, demographic information sheet and envelope which may be used to submit a newborn's blood specimen for the first or second screen, repeat or follow-up testing. This term includes replacement specimen collection forms.

(B) Two screen specimen collection kit--two connected, department approved bar-coded, quality controlled filter paper collection devices, demographic information sheets and envelopes which allows the first and second screens to be linked. The kit is designed so that the two collection devices are easily separated such that when the first specimen is collected, the remaining collection device and an envelope will be given to the mother to take to the first doctor's visit for collection of the second newborn screening blood specimen.

(8) Replacement specimen collection forms--consist of a single specimen collection kit for instances when a previously purchased specimen collection form is lost, damaged or otherwise unavailable.

(c) Specimen collection [~~Test~~] kits.

(1) The department will provide newborn screening specimen collection [~~test~~] kits upon written request from a provider of newborn screening. A separate specimen collection form [~~test kit~~] is required for each screen [~~screening panel~~].

(A) The department will provide specimen collection [~~test~~] kits for Medicaid-eligible or charity care newborns at no cost to the provider.

(B) If two screen specimen collections kits are used by the department, the department will provide replacement specimen collection forms at no cost to providers who purchase two screen specimen collection kits. Providers who do not purchase two screen specimen collection kits but need replacement specimen collection forms for the second screen may be charged the single screen specimen collection kit fee described in §73.54(1)(H) of this title (relating to Fee Schedule for Clinical Testing and Newborn Screening).

(C) [~~(B)~~] The department will provide specimen collection [~~test~~] kits for all other newborns at a fee described in §73.54(1)(H) of this title [~~(relating to Fee Schedule for Clinical Testing and Newborn Screening)~~].

(2) When a provider requests specimen collection [~~test~~] kits, the provider must identify the number estimated to be needed for Medicaid-eligible newborns, charity care newborns and other newborns. The provider's estimate shall be based on the provider's newborn screening services provided in the most recent fiscal or calendar year if the provider has previously provided these services. A provider shall provide further information upon request of the department to verify the appropriateness of the number of specimen collection [~~test~~] kits provided at no cost. A provider may use the no-cost specimen collection [~~test~~] kit only for a Medicaid-eligible or charity care newborn.

(3) The department will bill the requesting provider for specimen collection [~~test~~] kits when the specimen collection [~~test~~] kits are sent to the provider. Payment is due within 120 days from the provider's receipt of the specimen collection [~~test~~] kits.

(4) The department shall accept only its approved specimen collection [~~test~~] kits for submission of specimens.

(5) The provider shall ensure that the identifying and demographic information provided with the specimen collection [~~test~~] kit is complete and accurate when submitted to the department.

§73.54. Fee Schedule for Clinical Testing and Newborn Screening.

Fees for clinical testing and newborn screening shall not exceed the following amounts.

(1) Human specimens.

(A) - (G) (No change.)

(H) Newborn screening. [~~test kit, including screening panel--$40.~~] (Fees are based on the newborn screening specimen collection [~~test~~] kits described in §73.21 of this title (relating to Newborn Screening), which includes the cost of screening). [~~costs of the screening panel.~~)]

(i) Single screen specimen collection kit--$40; and

(ii) Two screen specimen collection kit--$80.

(I) - (L) (No change.)

(2) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603620
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 458-7111 x6972

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CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER J. DEPARTMENT OF STATE HEALTH SERVICES IMMUNIZATION SCHEDULE

25 TAC §97.221

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §97.221, concerning the Department of State Health Services Immunization Schedule, in accordance with the most recent recommendations of the federal Center for Disease Control and Prevention's Advisory Committee on Immunization Practices.

BACKGROUND AND PURPOSE

The amendment to §97.221 are proposed under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and, in accordance with the most recent recommendations of the Center for Disease Control and Prevention's Advisory Committee on Immunization Practices. The amendment to §97.221, Department of State Health Services Immunization Schedule, will serve as an updated immunization guide to directors and school nurses at child-care facilities, public or private primary and secondary schools, and institutions of higher education for administering recommended and mandatory age-appropriate vaccinations. Physicians and hospitals will also benefit from the updated version of the Department of State Health Services Immunization Schedule as a guide for determining age-appropriate vaccination of their patients. The 2006 Advisory Committee on Immunization Practices, the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians approved the recommendations and format of the childhood and adolescent immunization schedule and catch-up schedule for January--December 2006. The department will make the schedule available on the Immunization Branch's website at www.ImmunizeTexas.com.

SECTION-BY-SECTION SUMMARY

The department rule in 25 Texas Administrative Code, §97.63(2)(A), references certain parts of the immunization schedule, and makes those vaccines mandatory according to the stated schedule. Other references to the schedule in department rule do not make the schedule mandatory, but are merely recommendations.

The substantive changes to the 2006 Department of State Health Services Immunization Schedule are the following additional vaccines:

Meningococcal conjugate vaccine (MCV4) for all children ages 11-12 years, as well as to unvaccinated adolescents at high school entry (age 15 years), is now included in the 2006 Immunization Schedule; the previous 2005 Immunization Schedule did not include this vaccine. A new tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine for adolescents (Tdap adolescent preparation) has been added to the 2006 Schedule. Tdap is recommended for adolescents aged 11-12 years who have completed the recommended childhood diphtheria and tetanus toxoids and pertussis/diphtheria and tetanus toxoids and acellular pertusis (DTP/DTaP) vaccination series and have not received a tetanus and diphtheria toxoids (Td) booster dose.

In addition, substantive changes to the following existing vaccine recommendations were also made:

Hepatitis B vaccine birth dose is recommended for all newborns. In the previous Immunization Schedule, the Hepatitis B vaccine was recommended at 1-2 months, but could be administered at birth.

Influenza vaccine is now recommended for children aged ≥6 months with certain risk factors, which now specifically includes conditions that can compromise respiratory function or handling of respiratory secretions or that can increase the risk for aspiration. This was not previously included in the 2005 recommendations.

Hepatitis A vaccine is now universally recommended for all children at age 1 year (12-23 months). The previous recommendation was for children located only in certain high-risk areas.

The catch-up schedule for persons aged 7-18 years has been changed for Td. Now, Tdap may be substituted for any dose in a primary catch-up series or as a booster if age appropriate for Tdap. A 5-year interval from the last Td dose is encouraged when Tdap is used as a booster dose.

FISCAL NOTE

Casey S. Blass, Section Director, Disease Prevention and Intervention Section, has determined that for each year of the first five years that the section will be in effect, if future funds are appropriated at current levels, there will be no additional fiscal implications to state or local government as a result of enforcing and administering the section as proposed since funds needed to implement the rule were appropriated.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Blass has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Blass has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing and administering the section as proposed will be to update the immunization schedule that will serve as an updated immunization guide to directors and school nurses at child-care facilities, public or private primary and secondary schools, and institutions of higher education for administering recommended and mandatory age-appropriate vaccinations. Physicians and hospitals will also benefit from the updated version of the Department of State Health Services Immunization Schedule as a guide for determining age-appropriate vaccination of their patients.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to

protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tim Hawkins, Disease Prevention and Intervention Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 3394, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Council, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is proposed under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects Health and Safety Code, §81.023; Texas Education Code, §38.001 and §51.933; and Human Resource Code, §42.043.

§97.221. Department of State Health Services Immunization Schedule.

This schedule [~~is effective January 1, 2006, and~~] indicates the recommended ages for routine administration of childhood vaccines.
Figure: 25 TAC §97.221

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603628
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 458-7111 x6972

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CHAPTER 140. HEALTH PROFESSIONS REGULATION
SUBCHAPTER B. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDERS

25 TAC §§140.30 - 140.47

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§140.30 - 140.47, concerning the regulation and licensing of personal emergency response system (PERS) providers.

BACKGROUND AND PURPOSE

The passage of Senate Bill 568 in the 79th Regular Session of the Texas Legislature, 2005, created new Health and Safety Code, Chapter 781, exclusively focusing on the licensing and regulation of personal emergency response system (PERS) providers. It is the purpose of these rules to implement and administer Health and Safety Code, Chapter 781.

A "personal emergency response system" is one that is "installed in the residence of a person; monitored by an alarm company; designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the provider may dispatch the appropriate aid; and is not part of a combination of alarm systems that includes a burglar alarm or fire alarm."

SECTION BY SECTION SUMMARY

Section 140.30 introduces the content and purpose of the chapter. Section 140.31 provides definitions of terms used throughout the chapter. Section 140.32 provides a schedule of fees for program. Section 140.33 provides a method for the public to request that rules be adopted or amended. Section 140.34 sets out standard department requirements for the initial license and registration application process. Section 140.35 establishes general liability insurance requirements for licensees. Section 140.36 references the across-the-board application processing timeframes and procedures established for professional licensing staff. Section 140.37 defines who is required to hold a license and a registration. Section 140.38 sets out specific procedures for renewing licenses and registrations; and addresses across-the-board legislative requirements concerning active military duty, student loan default, and child support/custody. Section 140.39 clearly assigns responsibility for address change notifications to the licensee/registrant.

Section 140.40 establishes standards of ethical conduct for PERS licensees and registrants, and addresses the relationship between the department and PERS providers. Section 140.41 addresses department policy to provide information regarding regulatory functions and complaint procedures to the public and other agencies. Section 140.42 details the complaint process and complaint investigation. Section 140.43 defines grounds for disciplinary action to be taken against licensees and registrants. Section 140.44 addresses informal conferences. Section 140.45 addresses formal hearings. Section 140.46 sets out guidelines for the licensing and registration of persons with criminal convictions. Section 140.47 addresses license suspension for failure to maintain insurance coverage.

FISCAL NOTE

Kathryn Perkins, Director, Health Care Quality Section, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of $32,462 the first fiscal year and $32,462 each year for fiscal years two through five. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed, if those businesses engage in the provision of PERS services as defined by the Health and Safety Code, Chapter 781. The anticipated cost of licensing fees for each business will vary depending upon the number of employees and branch offices that a business has. The anticipated cost for small businesses will be the same as those of larger businesses. There will be economic cost to individuals who are required to comply with the sections as proposed, if the individuals work for a business entity that does not cover the cost of registration for its employees. The cost will be $125 every two years for each category of registration held by the individual. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to protect and promote public health, safety, and welfare, by regulating personal emergency response systems services.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Richard R. Rees, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-4565 or by email to pers@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed new rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed new sections are authorized by Health and Safety Code, §781.051(b), which requires the Executive Commissioner to adopt rules necessary to administer the chapter and by Health and Safety Code, §781.051(c), which requires the Executive Commissioner to establish fees necessary to administer the chapter, including fees for processing and issuing or renewing a license or registration under the chapter; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rules affect Health and Safety Code, Chapters 781 and 1001; and Government Code, Chapter 531.

§140.30. Introduction.

(a) This chapter implements the applicable provisions of Health and Safety Code, Chapter 781, concerning the regulation and licensing of personal emergency response system (PERS) providers.

(b) These sections cover definitions; fees; petition for rulemaking; application requirements and procedures; requirement for insurance; application processing; categories of licensure and registration; renewal of license or registration; responsibilities and procedures for changes of name or address; standards of conduct for PERS providers; consumer information concerning the department's regulatory functions and procedures for filing complaints; complaint investigations; grounds for disciplinary action; informal disposition; formal hearings; guidelines for issuing licenses and registrations to persons with criminal convictions; and immediate suspension for failure to maintain insurance coverage.

§140.31. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Texas Health and Safety Code, Chapter 781.

(2) Administrator--The department employee designated as the administrator of the regulatory activities authorized by the Act.

(3) Applicant--A person or entity who applies for a license or registration to provide personal emergency response system services under the Act.

(4) Branch office license--A place of business, other than the principal place of business as shown in department records, from which business is conducted, solicited, or advertised.

(5) Business entity--A business operating under any legal business structure.

(6) Client--A person who has entered into a contract to receive personal emergency response system services in return for financial or other considerations.

(7) Commissioner--The Commissioner of the Department of State Health Services.

(8) Contract--An agreement between a person or company regulated under this chapter and a client. Such contracts may be oral or written, or in any combination thereof.

(9) Department--The Department of State Health Services.

(10) Personal emergency response system--An alarm system that is installed in the residence of a person; monitored by an alarm systems company; designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the company may dispatch appropriate aid; and not part of a combination of alarm systems that includes a burglar alarm or fire alarm.

(11) PERS--Personal emergency response system.

(12) License--A license issued under the Act authorizing a person to provide personal emergency response system services.

(13) Licensee--A person that has been granted a license to provide personal emergency response system services in accordance with the Act.

(14) Registrant--A person that has been granted a registration to provide personal emergency response system services in accordance with the Act.

(15) Registration--A registration issued under the Act authorizing a person to provide personal emergency response system services.

(16) Shareholder--Any individual holding stock in a licensee who is actively involved in the normal course of operation and business of the licensee and shall not include those individuals who only hold stock in the licensee solely for the purposes of investment.

(17) Security salesperson--Any individual who is employed by a security services contractor to sell services offered by the contractor, and enters a client's residence at any time during the person's employment.

(18) Advertising--The direct solicitation for business which requires a license or registration to provide personal emergency response system services and involving more than a mere listing of a licensee's name, address, and telephone number.

§140.32. Fees.

(a) The fees are as follows:

(1) application and initial license to provide personal emergency response system services--$800;

(2) application for branch office license--$800;

(3) application and initial registration as an installer, manager, branch office manager, or salesperson of a personal emergency response system--$125;

(4) initial registration as an owner, officer, partner, or shareholder of a personal emergency response system services company--$125;

(5) renewal of a license or a branch office license to provide personal emergency response system services--$800;

(6) renewal of a registration as an installer, manager, branch office manager, or salesperson of a personal emergency response system--$125;

(7) renewal of a registration as an owner, officer, partner, or shareholder of a personal emergency response system services company--$125; and

(8) duplicate license, registration, or identification card--$20.

(b) For all application and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(c) Fees shall be made payable to the Department of State Health Services and may be in the form of a personal check, money order, or cashier's check.

(d) Fees submitted to the department are not refundable.

§140.33. Petition for Rulemaking.

Procedures for the submission, consideration, and disposition of a petition to adopt a rule are set out in 1 Texas Administrative Code, §351.2 (relating to Petition for the Adoption of a Rule).

§140.34. Application Requirements and Procedures.

(a) An applicant for a license or a registration must submit all required information on official application forms prescribed by the department and submit the required application fee and the initial license or registration fee.

(b) The application form shall contain the following information:

(1) specific information regarding personal data; full legal name of individual or business entity; date of birth; social security number; taxpayer identification number; information regarding other licenses, registrations, permits, and certifications held by applicant; and information regarding misdemeanor and felony convictions of the applicant;

(2) trade names and addresses of all locations and branch offices at which the applicant intends to conduct business;

(3) if the applicant is a corporation or other business entity, specific information regarding type of ownership, registered address, and names and addresses of all officers, directors, registered agents and major shareholders;

(4) if the applicant is a corporation, a current Certificate of Existence or Certificate of Authority issued by the Texas Secretary of State and a current letter from the Texas Comptroller of Public Accounts verifying that the corporation is current in the payment of franchise taxes;

(5) a statement that the applicant has read the Act and these rules;

(6) a statement that the applicant, if issued a license or registration, shall return the license or registration to the department upon revocation or suspension of the license or registration or upon lawful demand;

(7) a statement that the applicant understands that fees and materials submitted in the application process are nonrefundable and nonreturnable;

(8) a statement that the applicant agrees to comply with all state and federal laws and regulations regarding the sale and delivery of personal emergency response system services;

(9) a statement that the applicant meets the qualifications prescribed by the Act for a license or registration;

(10) a statement that the information contained in the application is truthful and complete;

(11) if the applicant is a corporation or other business entity, evidence of a general liability insurance policy on a certificate of insurance form prescribed by the department and countersigned by an insurance agent licensed in this state or a certificate of insurance for surplus lines coverage obtained under Insurance Code, Article 1.14-2, through a licensed Texas surplus lines agent resident in this state;

(12) if the applicant is a corporation or other business entity, a statement regarding the method by which monitoring services will be provided; and

(13) the signature of the applicant.

§140.35. Requirement for Insurance.

(a) As required by the Act, the department may not issue a license unless the applicant files with the department:

(1) evidence of a general liability insurance policy on a certificate of insurance form prescribed by the Texas Department of Insurance and countersigned by an insurance agent licensed in this state; or

(2) a certificate of insurance for surplus lines coverage obtained under Insurance Code, Chapter 981, through a licensed Texas surplus lines agent resident in this state.

(b) The general liability insurance policy must be conditioned to pay on behalf of the license holder damages that the license holder becomes legally obligated to pay because of bodily injury, property damage, or personal injury, caused by an event involving the principal, or an officer, agent, or employee of the principal, in the conduct of any business licensed under this chapter.

(c) The insurance policy must contain minimum limits of:

(1) $100,000 for each occurrence for bodily injury and property damage;

(2) $50,000 for each occurrence for personal injury; and

(3) a total aggregate amount of $200,000 for all occurrences.

(d) An insurance certificate executed and filed with the department under this chapter remains in effect until the insurer terminates future liability by providing to the department at least 10 days notice of the intent to terminate liability.

§140.36. Application Processing.

The department shall comply with the following procedures in processing applications for licenses and registrations and applications for license and registration renewal.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. The license or registration may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for a license or registration--30 working days;

(B) issuance of license or registration renewal after receipt of documentation of all renewal requirements--20 working days; and

(C) letter of denial of license or registration--30 working days.

(2) In the event an application is not processed in the time periods stated in paragraph (1) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request for reimbursement will be denied.

(3) Good cause for exceeding the time period is considered to exist if the number of applications for licenses, registrations, and renewals exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(4) If a request for reimbursement under paragraph (2) of this section is denied by the administrator, the applicant may appeal to the commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The program administrator shall provide written notice of the commissioner's decision to the applicant. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(5) Contested cases. The time periods for contested cases related to the denial of licenses, registrations, or renewals are not included within the time periods stated in paragraph (1) of this section. The time period for conducting a contested case hearing starts from the date the department receives a written request for a hearing and ends when the decision of the department is final and can be appealed. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§140.37. Categories of Licensure and Registration.

(a) A person acts as a personal emergency response system provider if the person sells, installs, services, monitors, or responds to only personal emergency response devices or systems. Unless a person holds a license as a PERS provider or is exempt under the Act, a person may not act as a PERS provider, offer to perform PERS services, or engage in business activity for which a license to provide PERS services is required.

(b) The following individuals engaged in providing PERS services for a licensee must hold a valid registration issued by the department:

(1) an alarm systems installer who installs, maintains, or repairs only personal emergency response systems;

(2) a manager or branch office manager;

(3) a security salesperson who is employed by a licensee to sell services offered by the licensee and enters a client's residence at any time during employment; and/or

(4) an owner, officer, partner, or shareholder who is responsible for managing the business of a licensee.

§140.38. Renewal of License or Registration.

(a) The purpose of this section is to set out the rules governing license or registration renewal.

(b) When issued, a license is valid for two years, as determined by the department, commencing on the date of issuance of the initial license. All registrations associated with the license shall expire on the same date as the license.

(c) A licensee or registrant must renew the license or registration biennially. The renewal date of a license shall be the last day of the month in which the license was originally issued.

(d) At least 30 days prior to the expiration date of a license or registration, the department shall send a notice of renewal to the licensee's or registrant's address in the department's records. The notice shall inform the licensee or registrant of the impending expiration and of the procedures for renewal.

(e) The renewal process shall require the applicant to provide the preferred mailing address and the disclosure of misdemeanor or felony convictions. If the applicant is a corporation or other business entity, evidence of a general liability insurance policy on a certificate of insurance form prescribed by the department and countersigned by an insurance agent licensed in this state or a certificate of insurance for surplus lines coverage obtained under Insurance Code, Article 1.14-2, through a licensed Texas surplus lines agent resident in this state, must also be submitted.

(f) A licensee or registrant has applied for renewal of the license or registration when the licensee or registrant has mailed the fully completed renewal form, the required renewal fee, and the certificate of insurance (if required) to the department prior to the expiration date of the license or registration. The postmark date shall be considered the date of mailing. If renewing electronically, the licensee or registrant has applied for renewal of the license or registration upon successful completion of the online renewal process.

(g) After review of the renewal application, the department shall issue a renewed license or registration to a licensee or registrant who has met all requirements for renewal.

(h) Each licensee or registrant is responsible for renewing the license or registration before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the license or registration shall not excuse failure to file for timely renewal.

(i) A licensee or registrant whose license or registration has expired may not provide, sell, or install personal emergency response system services in this state.

(j) A person whose license or registration has been expired for 90 days or less may renew the license or registration by paying to the department a renewal fee that is equal to one and one-half times the normally required renewal fee.

(k) A person whose license or registration has been expired for more than 90 days but less than one year may renew the license or registration by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(l) A person whose license or registration has been expired for one year or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures for an original license or registration.

(m) A licensee or registrant whose check for a licensing or registration fee is not honored by their financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the licensee's or registrant's permit holder's receipt of the department's notice. If proper payment is not received, the license or registration shall not be renewed. If a renewed license or registration has already been issued, it shall be ineffective.

(n) If a licensee or registrant fails to timely renew his or her license or registration because the licensee or registrant is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee or registrant may renew the license or registration pursuant to this subsection.

(1) Renewal of the license or registration may be requested by the licensee or registrant, the licensee's or registrant's spouse, or an individual having power of attorney from the licensee or registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license or registration. Licensees or registrants who renew in accordance with this subsection shall be excused from paying late fees and penalties.

(3) A copy of the official orders or other official military documentation showing that the licensee or registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee or registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(o) The department shall not renew a license or registration if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(p) The department shall not renew a license or registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License), for failure to pay child support or failure to comply with a court order providing for the possession of or access to a child.

§140.39. Changes of Name or Address.

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes by a licensee or registrant.

(b) The registrant shall notify the department of changes in name or preferred mailing address within 30 days of such change(s).

(c) Notification of changes shall be made in writing or by telephone and shall include the former and present name, registration number, former and present mailing address, and a copy of the legal name change document, marriage license, or divorce decree, if applicable.

(d) Before a replacement registration will be issued by the department, the registrant shall return any previously issued document(s).

(e) It is the responsibility of the registrant to comply with the provisions of this section. Notice of complaints, violations, disciplinary action, or other correspondence sent to the address in the department's records are deemed received by the registrant.

(f) A licensee that is a corporation or other business entity shall report changes of name or address to the department in advance of the effective date of the change and shall submit documentation of the change as directed by the department.

(g) A license issued to a corporation or other business entity is not transferable in the event of change of ownership of the corporation or business entity. The new owner shall comply with all application requirements and procedures for obtaining an original license.

(h) A new license or registration certificate and identification card shall not be issued until the licensee or registrant has submitted the duplicate license fee as set out in §140.32(a)(8) of this title (relating to Fees).

§140.40. Standards of Conduct for PERS Providers.

(a) An advertisement by a licensee or registrant soliciting or advertising business must contain the name and address of the licensee or registrant as shown in the department's records.

(b) A licensee shall require each of its employees or other persons who monitor or respond to personal emergency response devices or systems to complete a structured, on-the-job training program.

(1) A licensee shall include content in the training program that is customized and specific to the services provided by the licensee and to the licensee's consumers.

(2) A licensee shall, upon request by the department, provide documentation regarding the content of the training program and verifying that the training program has been successfully completed by all required personnel.

(c) A licensee is responsible for the conduct in the licensee's business of each employee of the licensee while the employee is performing assigned duties for the licensee.

(d) A licensee shall verify and maintain records on all employees, including the information required by the Act, §781.155 (relating to Application for Registration); and shall provide evidence of verification to the department upon request.

(e) A licensee shall at all times post the license in a conspicuous place in the principal place of the licensee's business and each branch office license in a conspicuous place in each branch office of the licensee.

(f) A licensee shall notify the department in writing not later than the 14th day after the date of:

(1) a change of address for the licensee's principal place of business;

(2) a change of a name under which the licensee does business; or

(3) a change in the licensee's officers or partners.

(g) A licensee shall notify the department in writing not later than the 14th day after the date a branch office is established, is closed, or changes address or location.

(h) A licensee shall provide PERS services pursuant to a written contract or agreement signed by the licensee and the client or the client's authorized representative. A licensee shall provide a copy of the contract or agreement to the client or the department upon request. The contract or agreement shall include, but not be limited to, a description of the PERS services and products to be provided and the fees for services and arrangements for payment. A licensee shall inform the client in writing of any changes to the contract or agreement and shall secure the client's or the client's authorized representative's signature verifying agreement with the changes.

(i) An advertisement or announcement used by a licensee or registrant relating to the provision of PERS services shall not contain information which is false, misleading, inaccurate, incomplete, out of context, deceptive, or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

(j) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes, but is not limited to, advertising that:

(1) makes any material misrepresentation of facts or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a licensee's services with another licensee's services unless the comparison can be factually substantiated;

(4) causes confusion or misunderstanding as to the credentials, education, or licensure of a licensee;

(5) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of consumer; or

(6) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(k) A licensee or registrant who retains or hires others to advertise or promote the licensee's business remains responsible for the statements and representations made.

(l) Licensees and registrants are bound by the provisions of the Act and this chapter.

(m) A licensee or registrant shall cooperate with the department by furnishing documents or information and by responding to a request for information from the department.

(n) A licensee or registrant shall comply with the terms of any order issued by the department relating to the licensee or registrant.

(o) A licensee or registrant shall not interfere with a department investigation by the willful misrepresentation of facts to the department or by the use of threats or harassment against any person.

(p) A licensee or registrant shall take reasonable action to inform medical or law enforcement personnel if the licensee or registrant determines that there is a definite probability of imminent physical injury to a client or determines that an emergency situation exists.

(q) For each client, a licensee or registrant shall maintain complete and accurate records including, but not limited to, the dates of services, the activation of and response to a client's alarm device, a detailed history of client calls and responses, and billing information.

(r) A licensee or registrant shall maintain records for as long as the client is receiving PERS services, and for five years after the termination of services.

(s) A licensee or registrant shall not engage in habitual drunkenness or be addicted to or dependent upon narcotics or illegal substances.

(t) A licensee or registrant shall not engage in sexual contact or sexual exploitation with a client.

(u) Sexual contact means the activities and behaviors described by Texas Penal Code, §21.01; or requests by a licensee or registrant for conduct described by Texas Penal Code, §21.01.

(v) Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, which can reasonably be construed as being for the purposes of sexual arousal or sexual gratification or sexual abuse of any person.

§140.41. Consumer Information.

(a) The department shall prepare information of interest to consumers or recipients of PERS services describing the department's regulatory functions and the procedures by which complaints are filed with and resolved by the department.

(b) The department shall make the information available to the public and appropriate state agencies.

§140.42. Filing Complaints and Complaint Investigations.

(a) Complaints alleging that a person has violated the Act or this chapter may be filed with the department on a department complaint form or in writing by regular mail, facsimile, or electronic mail. The department may initiate a complaint based on a telephone call if there is a sufficient basis to proceed.

(b) Upon receipt of a written complaint, the department shall send the complainant an acknowledgment letter. The department shall periodically notify the complainant and the respondent of the status of the complaint until its final disposition.

(c) Anonymous complaints may be investigated by the department if there is a sufficient basis and documentation to proceed.

(d) The department shall investigate the complaint and may recommend that the license or registration be revoked, suspended, placed on probation, or that other appropriate action as authorized by law be taken.

(e) If department staff determines that the complaint is not within the department's jurisdiction, the complainant will be notified. The complaint may be referred to another governmental agency for review.

(f) If department staff determines that there are insufficient grounds to support the complaint, the complaint shall be dismissed. Written notice of the dismissal will be provided to the licensee or registrant or person against whom the complaint has been filed and the complainant.

§140.43. Grounds for Disciplinary Action.

(a) The department may deny a license or registration application or renewal application; suspend or revoke a license or registration; place a licensee or registrant on probation; or issue a reprimand for a violation of the Act or this chapter.

(b) The department may also impose an administrative penalty for a violation of the Act or this chapter. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the administrative penalty may not be less than $50 or more than $5,000 for each violation.

(c) Prior to institution of formal proceedings to deny an application, revoke or suspend, place on probation, issue a reprimand, or impose an administrative penalty, the department shall give written notice to the licensee or registrant by certified mail, return receipt requested, of the facts or conduct alleged to warrant the proposed action, and the licensee or registrant shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(d) If disciplinary action of a licensee or registrant is proposed, the department shall give written notice by certified mail, return receipt requested, that the licensee or registrant must request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(e) The department may request the Attorney General to bring an action for an injunction to prohibit a person from violating the Act or this chapter.

(f) The department may not deny a license or registration application or suspend, revoke, or probate a license or registration or impose administrative penalties against a licensee or registrant based on the refusal of the licensee or registrant to:

(1) submit to a genetic test; or

(2) reveal:

(A) whether the applicant, licensee, or registrant has submitted to a genetic test; or

(B) the results of any genetic test to which the applicant, licensee, or registrant has submitted.

§140.44. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or registrant or an applicant for a license or registration may be made through an informal conference held to determine whether an agreed settlement order may be secured.

(b) An informal conference shall be voluntary.

(c) A conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(d) The licensee or registrant, the licensee's or registrant's attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(e) The complainant shall not be considered a party in the informal conference, but shall be given an opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the informal conference.

(f) At the conclusion of the informal conference, department representatives may make recommendations for informal disposition of the complaint or contested case, or for any disciplinary action authorized by the Act. The department representatives may also:

(1) conclude that the department lacks jurisdiction;

(2) conclude that a violation of the Act or this chapter has not been established;

(3) order that the investigation be closed; or

(4) refer the matter for further investigation.

§140.45. Formal Hearings.

A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

§140.46. Guidelines for Issuing Licenses and Registrations to Persons with Criminal Convictions.

(a) The purpose of this section is to comply with the requirements of Occupations Code, Chapter 53, Subchapter C (relating to Notice and Review of Suspension, Revocation, or Denial of License) and with Health and Safety Code, §781.108 (relating to Insurance; Health and Safety Code, §781.103 (relating to Application for License); and Health and Safety Code, §781.151 (relating to Registration Required).

(b) The department may deny a license or registration application or a license or registration renewal application, or revoke, suspend, or place on probation an existing license or registration if an applicant, licensee, or registrant has been convicted of a crime (felony or misdemeanor) according to the following guidelines:

(1) those criminal convictions listed in the Act, §781.106, shall be considered in determining eligibility for an original or renewal license or registration;

(2) those criminal convictions which evidence an unwillingness or inability to comply with the Act or this chapter may be asserted as a basis to deny a license or registration or to institute disciplinary action against an existing license or registration; and

(3) the factors and evidence listed in the Occupations Code, Chapter 53, Subchapter B (relating to Ineligibility for License) shall be considered in determining eligibility for an original or renewal license or registration.

(c) In accordance with the Act, the department may deny an application for a license or registration or for the renewal of a license or registration if the applicant has been convicted in any jurisdiction of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction.

§140.47. Immediate Suspension for Failure to Maintain Insurance Coverage.

(a) The department shall immediately suspend the license of a license holder who fails to maintain on file with the department at all times the certificate of insurance required by the Act.

(b) The department may rescind the license suspension if the license holder provides proof to the department that the insurance coverage is still in effect. The license holder must provide the proof in a form satisfactory to the department not later than the 10th day after the date the license is suspended.

(c) After suspension of the license for a period of more than 10 days, the department may not reinstate the license until a new application for licensure is filed accompanied by a proper insurance certificate. The department may deny the application notwithstanding the applicant's submission of proof of insurance:

(1) for a reason that would justify suspending, revoking, or denying a license; or

(2) if, during the suspension, the applicant performed a practice for which a license is required, except as provided by subsection (d) of this section.

(d) If the suspended license has not expired, a license holder may continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy Campbell
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER I. SUPER-COMBINATION LICENSE REVENUE ALLOCATION

31 TAC §53.130

The Texas Parks and Wildlife Department (the department) proposes new §53.130, concerning Super-combination License Revenue Allocation. The proposed new rule would establish a methodology for determining the allocation of revenues from the sale of stamp endorsements (stamps) that are part of the super-combination hunting and fishing license package and the senior super-combination hunting and fishing license package.

Under Parks and Wildlife Code, Chapter 43, no person may fish in saltwater without having purchased a saltwater fishing stamp, no person may fish in public freshwater without having purchased a freshwater fishing stamp, no person may hunt a migratory game bird without having purchased a migratory game bird stamp, no person may hunt an upland game bird without having purchased an upland game bird stamp, and no person may hunt deer, turkey, or javelina during an archery-only season without having purchased an archery stamp.

Under Parks and Wildlife Code, §11.302, all revenue received from the sale of all types of hunting licenses, fishing licenses, and stamps must be placed in the Game, Fish, and Water Safety Account. Parks and Wildlife Code, Chapter 43, further specifies how the department deposits and spends the proceeds from the sale of each type of stamp. Under §43.405, the net receipts from the sale of saltwater fishing stamps shall be spent for coastal fisheries enforcement and management. Under §43.656, the net proceeds from the sale of the migratory game bird stamp may be used only for the management of and research concerning migratory game birds; the acquisition, lease, or development of migratory game bird habitats; contracts, donations, and grants; and only in a manner that addresses the needs of migratory birds in this state. Under §43.658, the net proceeds from the sale of the upland game bird stamp may be used only for the management of and research concerning upland game birds; the acquisition, lease, or development of upland game bird habitats; contracts, donations, and grants; and only in a manner that addresses the needs of upland game birds in this state. Under §43.805, the net receipts from freshwater fishing stamp sales may be spent only for the repair, maintenance, renovation, or replacement of freshwater fish hatcheries in this state; the purchase of game fish that are stocked into the public water of this state; or the restoration, enhancement, or management of freshwater fish habitats. The net proceeds from the archery stamp must be deposited in the Game, Fish, and Water Safety Account and may be spent for any purpose authorized for that account. As a result, the net proceeds from the sale of each stamp, except for the archery stamp, are to be used in a way that is directly related to the type of stamp sold.

Prior to 1995, stamps had to be purchased separately from hunting and fishing licenses, making it an easy matter for the department to determine from direct sales how much revenue should be placed in each stamp fund. When stamps are sold separately, the amount of net proceeds placed in each stamp fund is a function of the price of the stamp and the popularity of the stamp. In 1996 the department created the super-combination hunting and fishing license as an option for customers to obtain the hunting license, the fishing license, and all required stamps in one package. Under Parks and Wildlife Code, Chapter 50, all combination licenses must be sold at less than the combined cost of the individual licenses, permits, or stamps included in the package. The super-combination license package is very popular, but because it is required by statute to be discounted, the department must allocate revenue to respective stamp accounts according to a formula.

For purposes of discussion, all figures provided are based on the current prices of the super-combination license package and the licenses and stamps contained in that package, but the proposed formula would be the same for the senior super-combination package. The undiscounted value of all items contained in a super-combination license package is $82: hunting license ($23), fishing license ($23), saltwater stamp ($10), freshwater stamp ($5), upland game bird stamp ($7), migratory game bird stamp ($7), and archery stamp ($7). The sale price of the super-combination license package is $64, or approximately 78% of the face value of the licenses and stamps contained in the package.

Under the proposed new rule, the discount for each of the two licenses in the super combination package (i.e. a hunting license and a fishing license), for purposes of determining the eventual allocation of stamp revenue, would be established at 10%. Therefore the allocation of stamp revenue would be $20.70 for each stamp, using current prices ($23 X .90). Thus, for each super-combination license package sold, the department would deposit $41.40 ($20.70 X 2) in the Game, Fish, and Water Safety Account as revenue from the sale of hunting and fishing licenses. The remaining revenue ($22.60) then would be divided and allocated among the stamp accounts within the Game, Fish, and Water Safety Account by means of a formula. In an effort to ensure that net proceeds placed in each stamp account continues to be a function of the price of the stamp and the popularity of each stamp, the formula would use the price of each stamp and the number of persons believed to be engaging in the activity for which the stamp is required to develop a weighted utilization factor for each stamp, which then would be used to calculate the relationship of each stamp's weighted utilization factor to total stamp weighted utilization. This value would represent a relative utilization for each stamp, which would then be multiplied by the stamp revenue ($22.60) to yield the amount to be allocated to each stamp account, less a proportional amount representing any commission or collection cost. The department would determine the utilization of each stamp by means of an annual survey of the hunting and fishing habits of super-combination license users.

Gene McCarty, Deputy Executive Director for Administration, has determined that for each of the first five years that the repeals as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the proposed rule, as the rule does not affect revenues or expenses for any unit of government.

Mr. McCarty also has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the proper allocation of revenue from the sale of super-combination hunting and fishing license packages to individual stamp accounts.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed, as the rule affects only the department.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

Comments on the proposed rule may be submitted to Gene McCarty, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4651 (e-mail: gene.mccarty@tpwd.state.tx.us).

The new rule is proposed under Parks and Wildlife Code, §50.002, which authorizes the commission to establish fees for combination licenses.

The proposed new rule affects Parks and Wildlife Code, Chapter 50.

§53.130. Super-Combination License Revenue Allocation.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Gross fishing license receipts--the gross receipts received from the sale of the fishing license included within a super-combination package and shall equal 90 percent of the original price of the fishing license in the package.

(2) Gross hunting license receipts--the gross receipts received from the sale of the hunting license included within a super-combination package and shall equal 90 percent of the original price of the hunting license in the package.

(3) Gross license receipts--the aggregate of the gross hunting license receipts and the gross fishing license receipts.

(4) Gross receipts--the total amount received from the sale of a super-combination license package before any commission or any other collection cost is deducted.

(5) Gross stamp receipts--the gross receipts from the sale of stamps included in the super combination license package.

(6) License--the hunting license and fishing license included in the super-combination license package.

(7) Net receipts of each license or stamp included in the super-combination license package--the gross fishing license receipts or gross hunting license receipts or gross stamp receipts, less any commission and/or other collection cost allocated to that license or stamp.

(8) Original price--the price of a license or stamp if sold separately rather than as part of a package.

(9) Purchaser utilization--the use of a stamp included in the super-combination license package by the purchaser of a super-combination license package.

(10) Stamp--any stamp included in the super-combination license package.

(11) Super-combination license package (package)--those licenses and stamps listed in §53.3(7) and (8) of this title (relating to Combination Hunting and Fishing License Packages).

(b) The amount of gross stamp receipts shall equal the difference between gross receipts and gross license receipts.

(c) Gross stamp receipts shall be allocated to each stamp in the package by means of a relative weighting calculated by using both the original price of the stamp and purchaser utilization as established by annual survey.

(d) Any commission and any other collection cost related to the sale of a package shall be allocated to each license and stamp included in the package in a manner proportional to the gross receipts of that item relative to the total gross receipts of the package.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 57. FISHERIES
SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL EXOTIC FISH, SHELLFISH AND AQUATIC PLANTS

31 TAC §§57.111, 57.113 - 57.124, 57.129 - 57.134, 57.136

The Texas Parks and Wildlife Department proposes amendments to §§57.111, 57.113 - 57.124, 57.129 - 57.134 and 57.136, concerning Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants. The amendments are necessary to reflect changes in the scientific nomenclature and reclassification of some species, correct errors, improve consistency and clarify certain provisions. In addition, the department has determined that it is necessary to add several families, genera and species to the definition of harmful or potentially harmful exotic fish, shellfish and aquatic plants in order to better protect native aquatic resources and to be consistent with United States Department of Agriculture and Texas Department of Agriculture regulations.

The proposed amendment to §57.111, concerning Definitions, would alter the definition of "fish farmer" by including the term "aquaculturist," replace the term "fish farm" with the term "aquaculture facility" and replace the term "fish farm complex" with the term "aquaculture complex". The amendment is necessary to clarify that the subchapter applies to persons who culture or possess harmful or potentially harmful exotic aquatic plants. Conforming changes to reflect the altered terminology are made throughout the subchapter. The amendment also defines the terms 'gutted' and 'beheaded' to ensure unambiguous meanings of those terms for the purposes of enforcing the provisions of §57.113, concerning Exceptions, which established certain conditions under which exotic fish may be possessed or transported.

The proposed amendment to §57.111, concerning Definitions, would update the rules to include changes in scientific nomenclature and the reclassification of certain species, correct errors, and make nonsubstantive changes in the interest of clarification and consistency.

The proposed amendment to current §57.111(14)(E) would clarify that the provisions of the subchapter affect only the genus Hydrocynus and add the correct subfamily name. The proposed amendment is necessary to make the provisions of the subchapter taxonomically accurate.

The proposed amendment to current §57.111(14)(F) would correct a misspelling (Pirambebas) and exclude the genus Piaractus from the provisions of the subchapter. The proposed amendment is necessary to maintain accurate taxonomic references and to exempt a genus that is fairly popular in the pet trade and not deemed to be an ecological threat to native ecosystems.

The proposed amendment to current §57.111(14)(G) would add the family name and common name for tetras affected by the subchapter in order to provide clarity and maintain parallelism with the identification convention employed throughout the subchapter.

The proposed amendment to current §57.111(14)(H) would add the family name for affected dourados in order to provide clarity.

The proposed amendment to current §57.111(14)(J) would comport the taxonomic references in the paragraph to conform with that prescribed by the American Fisheries Society. The proposed amendment is necessary to ensure accurate taxonomic references.

The proposed amendment to current §57.111(14)(M) would add the common names of affected carps and minnows, and add two new genera (Labeo and Catlocarpio) to the list of prohibited carps and minnows in addition to making changes to reflect reclassifications, corrections and clarifications. Carp in the genera Labeo and Catlocarpio are nearly identical to those in two already prohibited genera, Cirrhinus and Catla, respectively. Generally, exotic carp have caused a wide array of ecological problems in Texas and elsewhere and it is reasonable to assume that the genera Labeo and Catlocarpio have the potential to cause similar problems. These genera were not restricted previously because there did not appear to be an importation threat. However, small specimens of Catlocarpio are beginning to become available in the international pet trade, including over the internet. Catlocarpio are large Asian carp that reach sizes of eight feet or more. Aquarium fish that rapidly grow very large are prime candidates for illegal releases in local waters. Therefore, it is prudent to restrict these genera now before major trade markets have developed as opposed to attempting to eliminate them after they have become established in food markets or the pet trade.

The proposed amendment to current §57.111(14)(S) would adjust taxonomic references as necessary to reflect reclassification within the Tilapia family by the scientific community.

The proposed amendment to current §57.111(14)(V) would adjust taxonomic references as necessary to reflect reclassification within the Percidae family by the scientific community.

The proposed amendment to current §57.111(14)(W) would add taxonomic language to address differences of opinion within the scientific community regarding the family name of Nile perch.

The proposed amendment to current §57.111(14)(X) would correct the common names of the species affected by the subparagraph. The proposed amendment is necessary to improve clarity.

The proposed amendment to current §57.111(14)(Z) would correct a misspelling (Ruffe). The proposed amendment is necessary to maintain accurate taxonomic references.

The proposed amendment to §57.111(14)(DD), would correct an error by moving Heteropneustidae to subparagraph (AA), because the Heteropneustidae is the scientific name for the air sac catfishes family and should not be listed under the goby family. The proposed amendment also adds a single genus of the goby family to the definition of harmful or potentially harmful fish, shellfish and aquatic plants. Round gobies have already invaded the Great Lakes and have exerted significant detrimental ecological impacts there by devouring native fishes and their eggs and by their aggressive habits of driving native species from their spawning, nursery and feeding areas.

The proposed amendment to current §57.111(14)(CC) would add the common name of the Anguilliidae family. The proposed amendment is necessary to improve clarity.

The proposed amendment to current §57.111(14)(EE) and (FF) would add two new families (Moronidae and Percichthyidae) to the definition of harmful or potentially harmful fish, shellfish and aquatic plants. The Asian and European Moronidae and the Percichthyidae are ecological counterparts of Texas native striped and white basses and would compete for the same ecological niches. The Moronidae have already become established in the Great Lakes, where they are known to eat the eggs of white bass and other native species and to hybridize with native bass. The Percichthyidae, or Chinese perches, also known as cold water groupers, are cold and salinity-tolerant fish with very large mouths that are very similar to bass and have the potential to be competitive to a detrimental extent with Texas native basses.

The proposed amendment to §57.111(15)(A), also would expand the prohibition on harmful or potentially harmful crayfish from a single genus to all southern hemisphere species. Virtually all crayfish species can be ecological problems when introduced outside their natural ranges. Crayfish are a central component of freshwater food webs and ecosystems, acting as the dominant consumers of benthic invertebrates, detritus, macrophytes, and algae and as important forage for fish. Thus, additions to or removals of crayfish species from a native ecosystem often lead to large ecosystem effects, including changes in fish populations and losses in biodiversity. North American crayfish species are particularly susceptible to invasions from non-indigenous species because they have limited natural ranges. The single greatest threat to crayfish biodiversity worldwide is from accidental or intentional introduction of non-indigenous crayfish. In Europe, native crayfish have suffered from competition with introduced crayfish, but the greater impact has been caused by a fungal plague carried by non-indigenous species. Consequently, it is prudent to restrict non-indigenous crayfish species now before they become components of the aquaculture or pet industries and emerge as a significant problem.

The proposed amendment to current §57.111(15)(C), (E) and (G) reflects reclassifications and makes clarifications. Under the current rules, a single genus of giant rams-horn snails and a single species of applesnails are prohibited. The proposed amendment would expand the prohibition to include the entire family, which now includes both of these groups as a result of reclassification. The expansion is necessary because many of these snails are significant crop and ecological pests, eating plants and carrying diseases and parasites. An exception has been included for spiketop applesnail, which is the primary snail sold for aquarium culture. Spiketop applesnail is not cold-tolerant, does not eat larger aquatic plants, and is unlikely to become established or problematic in Texas. The amendment also alters taxonomic references to reflect reclassification within the Penaeid shrimp family by the scientific community, which is necessary to maintain accurate taxonomic references.

The proposed amendment to current §57.111(16)(A), (C), (I) and existing §57.111(16)(L) would alter scientific names to include alternate common names (duckweed, water spinach), to reflect reclassification of certain species by the scientific community (waterhyacinth) and would add eight species to the list of harmful or potentially harmful exotic aquatic plants in order to be consistent with United States Department of Agriculture and Texas Department of Agriculture regulations. The amendment is necessary to improve accuracy and clarity, and to ensure that the rules do not conflict with federal provisions.

The proposed amendment to current §57.111(17) and (29) would clarify the boundary description of the harmful or potentially harmful exotic species exclusion zone and explicitly state that shellfish and/or water from a quarantined facility may not come into contact with public water. The proposed amendment is necessary to more accurately identify the area of the state to which the exclusion provisions apply, and to explicitly state a prohibition so as to remove the possibility of ambiguity.

The proposed amendment to current §57.111(30) would add a definition for "shellfish disease specialist." The amendment is necessary because the provisions of §57.114, concerning Health Certification of Exotic Shellfish, requires that exotic shellfish be certified as disease free by shellfish disease specialist. The proposed amendment establishes the criteria that a person must meet in order to be regarded by the department as qualified to certify the health status of exotic shellfish.

The proposed amendment to §57.113, concerning Exceptions, would replace terminology as necessary to be consistent with the proposed amendments to §57.111, concerning Definitions, and clarify the conditions under which exotic fish or shellfish may be possessed without a permit. The current rule specifies that exotic fish and shellfish may be possessed without a permit if 'the intestines have been removed.' The amendment would replace that phrase with the phrase 'gutted or beheaded.' The intent of the current rule is to prevent live exotic fish and shellfish from being released into native ecosystems. By using the term 'gutted' the department hopes to provide a more precise description of the condition that must exist in order for the exception to apply and provides for beheading in addition to evisceration as an acceptable practice for ensuring non-viability.

The amendments to §57.114, concerning Health Certification of Native Shellfish, would reword the provisions of subsections (d), (e), (f)(2), (g), (h), (i) and (j) to conform terminology to be consistent with the proposed amendment to §57.111 and to make the grammatical structure consistent. The proposed amendment also clarifies the disease-testing process that must by followed by an aquaculture facility prior to the discharge of waste into or adjacent to public waters. Under current rules, a sample of shellfish must be tested for disease manifestation before a facility harvests or discharges waste 'for the first time in a calendar year.' The rules further require that the tests be performed within 14 days of harvest or discharge. In practice, harvest occurs once per year; however, some facilities could potentially complete more than one harvest cycle in a year, and some facilities periodically conduct water exchanges. Because the intent of the current rule is to ensure that exotic shellfish in a facility are tested and certified within 14 days before water is discharged, the department has determined that it is necessary to remove potential ambiguity from the current rule. Therefore, the proposed amendment requires disease testing to take place no more than 14 days before any harvest or discharge occurs. The amendment is necessary to protect water resources and aquatic ecosystems.

The amendments to §57.115, concerning Transportation of Exotic Species, and §57.116, would conform terminology to be consistent with the proposed amendment to §57.111 and effect other nonsubstantive changes, such as implementing a consistent capitalization convention.

The proposed amendment to §57.116, concerning Exotic Species Invoice, also would conform terminology to be consis-

tent with the proposed amendment to §57.111 and effect other nonsubstantive changes, such as implementing a consistent capitalization convention.

The proposed amendment to §57.117, concerning Application Requirements, would allow persons who wish to culture harmful or potentially harmful exotic aquatic plants to be eligible to apply for an exotic species permit. The proposed amendment also would conform terminology to be consistent with the proposed amendment to §57.111.

The proposed amendments to §§57.118, concerning Exotic Species Permit Issuance; 57.119, concerning Exotic Species Permit: Requirements for Permits; 57.120, concerning Exotic Species Permit: Expiration and Renewal; and 57.121, concerning Exotic Species Permit--Amendment, also would conform terminology to be consistent with the proposed amendment to §57.111.

The proposed amendment to §57.122, concerning Appeal, would eliminate the reference to rules of practice and procedure of the department and require instead that all appeals be conducted as provided by the State Office of Administrative Hearings. The amendment is necessary because the department repealed its rules of practice and procedure in 1996.

The amendments to §§57.123, concerning Exotic Species Permit Reports; 57.124, concerning Triploid Grass Carp: Sale; Purchase; 57.129, concerning Exotic Species Permit: Private Facility Criteria; 57.130, concerning Exotic Species Interstate Transport Permit; 57.131, concerning Exotic Species Interstate Transport Permit: Application and Issuance; 57.132, concerning Exotic Species Interstate Transport Permit: Permittee Requirements; and 57.134, concerning Wastewater Discharge Authority, would replace terminology as necessary to comport the sections with the proposed amendment to §57.111 and would implement a standardized capitalization convention.

The proposed amendment to §57.136, concerning Penalties, would add a reference to penalties prescribed under the Agriculture Code. The proposed amendment is necessary to include the department's authority to impose penalties under the Agriculture Code for certain violations related to possession, propagation, sale or release of harmful or potentially harmful exotic species by an aquaculturist.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed is in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules because the required duties are already being carried out and the amendments neither create, replace, nor eliminate any sources of revenue.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be rules that are clearer, more accurate, and more consistent, which facilitates compliance and therefore enhances the department's ability to protect the native aquatic natural resources of the state.

The department does not anticipate that there will be any adverse economic effects on small businesses, microbusinesses, or persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules because Chapter 2007 does not apply to rules controlling non-indigenous or exotic aquatic resources.

The department has not performed a regulatory impact analysis because the proposed amendments do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

A consistency determination is not required under 31 TAC Chapter 505 because the proposed amendments do not involve any of the four threshold actions that would subject the proposed rules to a consistency review under the Coastal Management Program.

Comments on the proposed rules may be submitted to Joedy Gray, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-8037 (e-mail: joedy.gray@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §66.007, which authorizes the commission to regulate the importation, possession, sale, and placing into the water of this state harmful or potentially harmful exotic fish, shellfish and aquatic plants, and under Agriculture Code, §134.020, which authorizes the commission to regulate the importation, propagation, and sale of harmful or potentially harmful exotic species by an aquaculturist.

The proposed amendments affect Parks and Wildlife Code, Chapter 66 and Agriculture Code, Chapter 134.

§57.111. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aquaculture or fish farming--The business of producing and selling cultured species raised in private facilities.

(2) Aquaculturist or fish farmer--Any person engaged in aquaculture.

(3) Aquaculture facility--The property, including all drainage ditches and private facilities where cultured species are produced, held, propagated, transported or sold.

(4) Aquaculture complex--A group of two or more separately owned aquaculture facilities located at a common site and sharing privately owned water diversion or drainage structures.

(5) Beheaded--The complete detachment of the head (that portion of the fish from the gills to the nose) from the body.

(6) [~~(2)~~] Certified Inspector--An employee of the Texas Parks and Wildlife Department [~~or the Texas A&M Sea Grant College Program~~] who has satisfactorily completed a department approved course in clinical analysis of shellfish.

(7) [~~(3)~~] Cultured species--Aquatic plants or wildlife resources raised under conditions where at least a portion of their life cycle is controlled by an aquaculturist.

(8) [~~(4)~~] Clinical Analysis Checklist--A TPWD [~~An inspection~~] form [~~provided by the department~~] specifying sampling pro-

tocols and listing certain characteristics which may constitute manifestations of disease.

(9) [~~(5)~~] Department--The Texas Parks and Wildlife Department or a designated employee of the department.

(10) [~~(6)~~] Director--The executive director of the Texas Parks and Wildlife Department.

(11) [~~(7)~~] Disease--Contagious pathogens or injurious parasites which may be a threat to the health of natural populations of aquatic organisms.

(12) [~~(8)~~] Disease-Free--A status, based on the results of an examination conducted by a department approved shellfish disease specialist that certifies a group of aquatic organisms as being free of disease.

(13) [~~(9)~~] Exotic species--A nonindigenous plant or wildlife resource not normally found in public water of this state.

[~~(10) Fish farm--The property including all drainage ditches and private facilities from which cultured species are produced, held, propagated, transported, or sold.~~]

[~~(11) Fish farm complex--A group of two or more separately owned fish farms located at a common site and sharing privately owned water diversion or drainage structures.~~]

[~~(12) Fish farmer--Any person holding a valid license to engage in aquaculture or fish farming under Agriculture Code, Chapter 134.~~]

(14) [~~(13)~~] Grass carp--The species Ctenopharyngodon idella.

(15) Gutted--The complete removal of all internal organs and entrails.

(16) [~~(14)~~] Harmful or potentially harmful exotic fish--

(A) Lampreys Family: Petromyzontidae--all species except Ichthyomyzon castaneus and I. gagei;

(B) Freshwater Stingrays Family: Potamotrygonidae--all species;

(C) Arapaima Family: Osteoglossidae--Arapaima gigas;

(D) South American Pike Characoids Family: Characidae--all species of genus Acestrorhyncus;

(E) African Tiger Fishes Family, Subfamily Alestiidae: Hydrocyninae--all species of genus Hydrocynus;

(F) Piranhas and Pirambebas: Family Serrasalmideae,[~~Priambebus~~] Subfamily: Serrasalminae--all species except pacus of the genus Piaractus;

(G) Payara and other wolf or vampire tetras: Family Characidae, [~~Rhaphiodontid Characoids~~] Subfamily: Rhaphiodontinae--all species of genera Hydrolycus and Rhaphiodon, including Cynodon [~~(synonymous with Cynodon)~~];

(H) Dourados: Family Characidae, Subfamily: Bryconinae--all species of genus Salminus;

(I) South American Tiger Fishes Family: Erythrinidae--all species;

(J) South American Pike Characoids Family: Ctenolucidae--all species of genera Ctenolucius and Boulengerella, including Luciocharax [~~(synonymous with Boulengerella~~] and Hydrocinus [~~)~~];

(K) African Pike Characoids Families: Hepsetidae and Ichthyboridae--all species;

(L) Electric Eels Family: Electrophoridae--Electrophorus electricus;

(M) Carps and Minnows Family: Cyprinidae--all species and hybrids of species of genera: Aspius, Pseudoaspius, Aspiolucius (Asps); Abramis, Blicca, Megalobrama, Parabramis (Old World Breams); Hypophthalmichthys or Aristichthys (Bighead Carp); Mylopharyngodon (Black Carp); Ctenopharyngodon (Grass Carp); Cirrhinus (Mud Carp); Thynnichthys (Sandkhol Carp); Hypophthalmichthys (Silver Carp); Catla (Catla); Leuciscus (Old World Chubs, Ide, Orfe, Daces); Tor, including the species Barbus hexiglonolepsis (Giant Barbs and Mahseers); Rutilus (Roaches); Scardinius (Rudds); Elopichthys (Yellowcheek); Catlocarpio (Giant Siamese Carp); all species of the genus Labeo (Labeos) except Labeo chrysophekadion (black sharkminnow) [~~Abramis, Aristichthys, Aspius, Aspiolucius, Blicca, Catla, Cirrhina, Ctenopharyngodon, Elopichthys, Hypophthalmichthys, Leuciscus, Megalobrama, Mylopharyngodon, Parabramis, Pseudaspius, Rutilus, Scardinius, Thynnichthys, Tor, and the species Barbus tor (synonymous with Barbus hexoagoniolepis);~~

(N) Walking Catfishes Family: Clariidae--all species;

(O) Electric Catfishes Family: Malapteruridae--all species;

(P) South American Parasitic Candiru Catfishes Subfamilies: Stegophilinae and Vandelliinae--all species;

(Q) Pike Killifish Family: Poeciliidae--Belonesox belizanus;

(R) Marine Stonefishes Family: Synanceiidae--all species;

(S) Tilapia Family: Cichlidae--all species of genera [~~genus~~] Tilapia, Oreochromis and Saratherodon [~~(including Sarotherodon and Oreochromis)~~];

(T) Asian Pikeheads Family: Luciocephalidae--all species;

(U) Snakeheads Family: Channidae--all species;

(V) Old World Pike-Perches [~~Walleyes~~] Family: Percidae--all species of the genus Sander except Sander vitreum [~~Stizostedion except Stizostedion vitreum and S. canadense~~];

(W) Nile Perch Family: Centropomidae (also called Latidae)--all species of genera Lates and Luciolates;

(X) Seatrouts and Corvinas [~~Drums~~] Family: Sciaenidae--all species of genus Cynoscion except Cynoscion nebulosus, C. nothus, and C. arenarius;

(Y) Whale Catfishes Family: Cetopsidae--all species;

(Z) Ruffe [~~Ruff~~] Family: Percidae--all species of genus Gymnocephalus;

(AA) Air sac Catfishes Family: Heteropneustidae--all species;

(BB) Swamp Eels, Rice Eels or One-Gilled Eel Family: Synbranchidae--all species;

(CC) Freshwater Eels family: Anguilliidae--all species except Anguilla rostrata;

(DD) Round Gobies Family: Gobiidae--all species of genus Neogobius, including N. melanostoma [~~Heteropneustidae--All species of genus Heteropneustes~~].

(EE) Temperate Basses Family: Moronidae--all species except for Morone saxatilis, M. Chrysops and M. Mississippiensis and hybrids of these three species;

(FF) Temperate Perches Family: Percichthyidae--all species, including species of the genus Siniperca (Chinese perches).

(17) [~~(15)~~] Harmful or potentially harmful exotic shellfish--

(A) Crayfishes Family: Parastacidae--all species [~~of the genus Astacopsis~~];

(B) Mittencrabs Family: Grapsidae--all species of genus Eriocheir;

[~~(C) Giant Ram's-horn Snails Family: Piliidae (synonymous with Ampullariidae)--all species of genus Marisa;~~]

(C) [~~(D)~~] Zebra Mussels Family: Dreissenidae--all species of genus Dreissena;

(D) [~~(E)~~] Penaeid Shrimp Family: Penaeidae--all species of genera[~~genus~~] Penaeus, Litopenaeus, Farfantepenaeus, Fenneropenaeus, Marsupenaeus, and Melicertus (all previously considered Penaeus) except L. setiferus, Far. [~~F.~~] aztecus and Far. [~~F.~~] duorarum.

(E) [~~(F)~~] Oyster Family: Ostreidae--all species except Crassostrea virginica and Ostrea equestris.

(F) [~~(G)~~] Applesnails and Giant Rams--Horn Snail: all genera and species of the Family Ampullariidae (previously called Pilidae), including Pomacea and Marisa, except spiketop applesnail (Pomacea bridgesii) [~~Applesnails Family: Ampullariidae--Channeled Applesnail (Pomacea canaliculata)~~].

(18) [~~(16)~~] Harmful or potentially harmful exotic plants--

(A) Giant or Dotted Duckweed Family: Lemnaceae--Landolita punctata [~~Spirodela oligorhiza~~];

(B) Salvinia Family: Salviniaceae--all species of genus Salvinia;

(C) Waterhyacinth Family: Pontederiaceae--Eichhornia crassipes (floating waterhyacinth) and E. azurea (rooted waterhyacinth);

(D) Waterlettuce Family: Araceae--Pistia stratiotes;

(E) Hydrilla Family: Hydrocharitaceae--Hydrilla verticillata;

(F) Lagarosiphon Family: Hydrocharitaceae--Lagarosiphon major;

(G) Eurasian Watermilfoil Family: Haloragaceae--Myriophyllum spicatum;

(H) Alligatorweed Family: Amaranthaceae--Alternanthera philoxeroides;

[~~(I) Rooted Waterhyacinth Family: Pontederiaceae--Eichhornia azurea;~~]

(I) [~~(J)~~] Paperbark Family: Myrtaceae--Melaleuca quinquenervia;

(J) [~~(K)~~] Torpedograss Family: Gramineae--Panicum repens;

(K) [~~(L)~~] Water spinach (also called ong choy, rau mong and kangkong) Family: Convolvulaceae--Ipomoea aquatica [~~aquatic~~].

(L) Ambulia--Limnophila sessiflora;

(M) Narrowleaf False Pickerelweed--Monochoria hastate;

(N) Heartshaped False Pickerelweed--Monochoria vaginalis;

(O) Duck-lettuce--Ottelia alismoides;

(P) Wetland Nightshade--Solanum tampicense;

(Q) Exotic Bur-reed--Sparganium erectum;

(R) Brazilian Peppertree--Schinus terebinthifolius;

(S) Purple Loosestrife--Lythrum salicaria.

(19) [~~(17)~~] Harmful or potentially harmful exotic species exclusion zone--That part of the state that is both [~~area~~] south of SH 21 and east of I-35, but [~~, from its intersection with the Texas/Louisiana border, approximately five miles due east of Milam, Texas,~~] not including [~~that area of~~] Brazos County [~~south of SH 21, to San Marcos; thence south of IH 35 to Laredo~~].

(20) [~~(18)~~] Immediately--Without delay; with no intervening span of time.

(21) [~~(19)~~] Manifestations of disease--Manifestations of disease include, but are not limited to, one or more of the following: heavy or unusual predator activity, empty guts, emaciation, rostral deformity, digestive gland atrophy or necrosis, gross pathology of shell or underlying skin typical of viral infection, fragile or atypically soft shell, gill fouling, or gill discoloration.

(22) [~~(20)~~] Nauplius or nauplii--A larval crustacean having no trunk segmentation and only three pairs of appendages.

(23) [~~(21)~~] Operator--The person responsible for the overall operation of a wastewater treatment facility.

(24) [~~(22)~~] Place of business--A permanent structure on land where aquatic products or orders for aquatic products are received or where aquatic products are sold or purchased.

(25) [~~(23)~~] Post-larvae [~~Postlarva~~]--A juvenile crustacean having acquired a full complement of functional appendages.

(26) [~~(24)~~] Private facility--A pond, tank, cage, or other structure capable of holding cultured species in confinement wholly within or on private land or water, or within or on permitted public land or water.

(27) [~~(25)~~] Private facility effluent--Any and all water which has been used in aquaculture activities.

(28) [~~(26)~~] Private pond--A pond, tank, lake, or other structure capable of holding cultured species in confinement wholly within or on private land.

(29) [~~(27)~~] Public aquarium--An American Association of Zoological Parks and Aquariums accredited facility for the care and exhibition of aquatic plants and animals.

(30) [~~(28)~~] Public waters--Bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

(31) [~~(29)~~] Quarantine condition--Confinement of exotic shellfish such that neither the shellfish nor the water in which they are

or were maintained comes into contact with water in the state and with other fish and/or [~~or~~] shellfish.

(32) Shellfish disease specialist--A person with a degree in veterinary medicine or a Ph.D. who specializes in disease of shellfish.

(33) [~~(30)~~] Triploid grass or black carp--A grass carp (Ctenopharyngodon idella) or black carp (Mylophryngodon piceus) that [~~which~~] has been certified by the United States Fish and Wildlife Service as having 72 chromosomes and as being functionally sterile.

(34) [~~(31)~~] Waste--Waste shall have the same meaning as in Chapter 26, §26.001(6) of the Texas Water Code.

(35) [~~(32)~~] Water in the state--Water in the state shall have the same meaning as in Chapter 26, §26.001(5) of the Texas Water Code.

(36) [~~(33)~~] Wastewater treatment facility--All contiguous land and fixtures, structures or appurtenances used for treating wastewater pursuant to a valid permit issued by the Texas Commission on Environmental Quality.

§57.113. Exceptions.

(a) A person who holds a valid Exotic Species Permit issued by the department may possess, propagate, sell and transport to the permittee's private facilities exotic harmful or potentially harmful fish, shellfish and aquatic plants only as authorized in the permit provided the harmful or potentially harmful exotic species are to be used exclusively:

(1) as experimental organisms in a department approved research program; or

(2) for exhibit in a public aquarium approved for display of harmful or potentially harmful exotic fish, shellfish and aquatic plants.

(b) A person may possess exotic harmful or potentially harmful fish or shellfish, exclusive of grass carp, without a permit, if the [~~intestines of the~~] fish or shellfish have been gutted [~~removed~~], or in the case of oysters, if the oysters have been shucked or otherwise removed from their shells.

(c) A person may possess grass carp harvested from public waters that have not been permitted for triploid grass carp, without a permit, if the grass carp [~~intestines~~] have been gutted [~~removed~~].

(d) An aquaculturist [~~A fish farmer~~] who holds a valid exotic species permit issued by the department may possess, propagate, transport or sell water spinach, triploid grass carp [~~(Ctenopharyngodon idella)~~], silver carp [~~(Hypophthalmicthys molitrix)~~], triploid black carp, [~~(Mylophryngogon piceus, also~~] commonly known as snail carp[~~)~~], bighead carp [~~(Aristichthys/Hypophthalmicthys nobilis)~~], blue tilapia (Oreochromis aureusa [~~Tilapia aurea~~]), Mozambique tilapia (O. mossambica [~~Tilapia mossambica~~]), Nile tilapia (O. nilotocusa [~~Tilapia nilotica~~]), [~~water spinach (Ipomoea aquatica),~~] or hybrids between the three tilapia species, unless otherwise provided by conditions of the permit or these rules.

(e) An aquaculturist [~~A fish farmer~~] who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell Pacific white shrimp (Litopenaeus vannamei) provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(f) An operator of a wastewater treatment facility in possession of a valid exotic species permit issued by the department may possess and transport permitted exotic species to their facility only for the purpose of wastewater treatment.

(g) A person may possess Mozambique tilapia in a private pond or private facility subject to compliance with §57.116(d) of this title (relating to Exotic Species Transport Invoice).

(h) The holder of a valid triploid grass carp permit issued by the department may possess triploid grass carp as provided by conditions of the permit and these rules.

(i) A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:

(1) live individuals of triploid grass carp, silver carp, triploid black carp, bighead carp, blue tilapia, Mozambique tilapia, Nile tilapia [~~species~~] or hybrids of those species [~~listed in subsection (d) of this section~~] held in the place of business, unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the fish have been gutted or beheaded[~~the intestines or head of the fish are removed~~]; or

(2) Live Pacific white shrimp (Litopenaeus vannamei) held in the place of business if the place of business is not located within the exclusion zone described in §57.111 of this title (relating to Definitions) [~~Harmful or Potentially Harmful Exotic Species Exclusion Zone~~]. However, such a dealer may only sell or deliver this species to another person if the shrimp are dead and packaged on ice or frozen.

(j) The department is authorized to stock triploid grass carp into public waters in situations where the department has determined that there is a legitimate need, and when stocking will not affect threatened or endangered species, coastal wetlands, or specific management objectives for other important species.

(k) An aquaculturist [~~A fish farmer~~] who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (Litopenaeus stylirostris) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(l) A person operating [~~An operator of~~] a mechanical plant harvester in accordance with the provisions [~~possession~~] of a valid exotic species permit issued by the department may remove and dispose of prohibited plant species from public or private waters only by means authorized in the permit.

(m) Any person may possess water [~~Water~~] spinach [~~(Ipomoea aquatica)~~] for personal consumption.

§57.114. Health Certification of Exotic Shellfish.

(a) All disease free certification of exotic shellfish must be conducted by a shellfish disease specialist approved by the department.

(b) Any person importing live exotic shellfish from facilities outside the state must prior to importation:

(1) provide documentation to the department that the shellfish to be imported have been inspected and certified as disease-free by a department-approved shellfish disease specialist; and

(2) receive acknowledgment from the department that the requirements of paragraph (1) of this subsection have been met.

(c) Any person in possession of exotic shellfish for the purpose of production of post-larvae must provide to the department monthly certification that nauplii and post-larvae have been examined and are certified to be disease-free. If certification cannot be provided, the exotic shellfish must be maintained in quarantine condition until the department acknowledges in writing that the stock is disease-free or

specifies in writing condition(s) under which the quarantine can be removed.

(d) Any person in possession of exotic shellfish stocks who observes one or more of the manifestations of disease appearing on the clinical analysis checklist provided by the department shall:

(1) immediately place the entire facility under quarantine condition [~~the entire facility~~], immediately notify the department and immediately request an inspection from a certified inspector [~~department approved examiner~~]; or

(2) immediately place the entire facility under quarantine condition [~~the entire facility~~], immediately notify the department and immediately submit samples of the affected shellfish to a department approved shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(e) Upon receiving a request from a permit holder under subsection (d)(1) of this section, the certified inspector [~~department approved examiner~~] shall inspect the private facility, complete the clinical analysis checklist provided by the department, and submit copies of the checklist to the department and the permit holder.

(f) No more than 14 days prior to [~~Before~~] harvesting ponds or discharging any waste [~~for the first time in any calendar year~~] into or adjacent to water in the state, the permittee shall:

(1) have a certified inspector visit [~~department approved examiner inspect~~] the facility and examine samples of the shellfish from each [~~the~~] pond or other structure from which waste will be discharged or from which shellfish will be harvested or from any other pond or structure that in the opinion of the certified inspector requires further investigation [~~containing exotic shellfish no more than 14 days prior to the first discharge or harvest~~] and shall submit the results of the examination to the department on the [~~department approved~~] clinical analysis checklist; or

(2) submit samples of the shellfish from each [~~the~~] pond or other structure containing exotic shellfish to a department approved shellfish disease specialist for analysis no more than 14 days prior to the first discharge or harvest and submit the results of such analyses to the department immediately upon receipt.

(g) If the results of an inspection performed under subsection (f)(1) of this section indicate the presence of one or more manifestations of disease, the permittee shall immediately place the entire facility under quarantine condition and immediately submit samples of the shellfish from the affected portion(s) of the facility to a department approved shellfish disease specialist for analysis. Results of such analyses shall be forwarded to the department immediately upon receipt.

(h) If the results of analyses performed under subsection (f)(2) of this section indicate the presence of disease, the permittee shall immediately place the entire facility under quarantine condition.

(i) If the results of inspections or analyses of shellfish from a [~~A~~] private facility quarantined under subsections (d), (g) or (h) of this section indicate the presence of disease, the facility shall remain under quarantine condition until the department removes the quarantine condition in writing or authorizes in writing other actions deemed appropriate by the department based on the required analyses.

(j) If the results of inspections or analyses [~~testing~~] performed under subsection (f) of this section indicate the absence of any manifestations of disease, the permittee may begin discharging from the facility.

§57.115. Transportation of Live Exotic Species.

(a) Transport of live harmful or potentially harmful exotic species is prohibited except by:

(1) An aquaculturist [~~A fish farmer~~] in possession of a valid exotic species permit and an exotic species transport invoice [~~Exotic Species Permit and an exotic Species Transport Invoice~~];

(2) a commercial shipper acting for the permit holder in possession of an exotic species transport invoice [~~Exotic Species Transport Invoice~~];

(3) persons holding exotic species pursuant to limitations of §57.113 of this title (relating to Exceptions).

(b) An aquaculturist [~~A fish farmer~~] transporting live triploid grass or black carp must have sales invoices which account for all triploid grass or black carp being transported and a copy of the United States Fish and Wildlife Service certification declaring that the carp being transported have been certified as being triploid in addition to meeting requirements of Chapter 134 of the Agriculture Code.

§57.116. Exotic Species Invoice.

(a) An exotic species transport invoice shall contain all the following information correctly stated and legibly written: invoice number; date of shipment; name, address, and phone number of the shipper; name, address, and phone number of the receiver; aquaculture [~~fish farmer's Aquaculture~~] license number and exotic species permit number, if applicable; number and total weight of each harmful or potentially harmful exotic species; a check mark indicating interstate import, interstate export, or intrastate type of shipment. A completed invoice shall accompany each shipment of harmful or potentially harmful exotic species sold or transferred, and shall be sequentially numbered during the permit period; no invoice number shall be used more than once during any one permit period by the permittee.

(b) The exotic species transport invoice shall be provided by the permittee; one copy shall be retained by the permittee for a period of at least one year following shipping date and one copy shall be forwarded to the department's Exotic Species Program Leader.

(c) The permittee is responsible for supplying completed copies of the exotic species transport invoice to out-of-state dealers from which the permittee has purchased and or received harmful or potentially harmful exotic species, or to whom harmful or potentially harmful exotic species are transferred so that shipment will be properly marked and numbered upon delivery to the permittee in Texas.

(d) Owners, or their agents, of private ponds stocked with Mozambique tilapia or triploid grass carp by an Exotic Species Permit holder shall retain a copy of the Exotic Species Transport Invoice for a period of one year after the stocking date or as long as the tilapia or triploid grass carp are in the water, whichever is longer.

§57.117. Exotic Species Permit: [~~Fee and~~] Application Requirements.

(a) To be considered for an exotic species permit [~~Exotic Species Permit~~], the applicant shall:

(1) meet one or more of the following criteria:

(A) possess a valid aquaculture license [~~Aquaculture License~~];

(B) possess a valid permit from the Texas Commission on Environmental Quality authorizing operation of a wastewater treatment facility;

(C) possess a department approved research proposal involving use of harmful or potentially harmful exotic fish, shellfish or aquatic plants; [~~or~~]

(D) operate a public aquarium approved for display of harmful or potentially harmful exotic fish, shellfish or aquatic plants; or

(E) operate a facility approved by the department for the possession and propagation of harmful or potentially harmful exotic aquatic plants;

(2) complete and submit an initial exotic species permit application on a form provided by the department;

(3) submit an accurate-to-scale plat of the aquaculture facility specifically including, but not limited to, location of:

(A) all private facilities and owner's name and physical address including a designation on the plat of all private facilities which will be used for possession of harmful or potentially harmful exotic species;

(B) all structures which drain private facilities;

(C) all points at which private facility effluent is discharged from the private facilities or the aquaculture facility [~~fish farm~~];

(D) all structures designed to prevent escapement of harmful or potentially harmful species from the aquaculture facility [~~fish farm~~];

(E) any vats, raceways, or other structures to be used in holding harmful or potentially harmful exotic species;

(4) demonstrate to the department that an existing aquaculture facility [~~fish farm~~], private facility or wastewater treatment facility meets requirements of §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(5) remit to the department all applicable fees.

(b) Applicants for an exotic species permit for culture of harmful or potentially harmful exotic shellfish must meet all exotic species permit application requirements and requirements for disease free certification as listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish).

(c) An applicant for an exotic species permit shall provide upon request from the department documentation necessary to identify any harmful or potentially harmful exotic species and confirm the source of origin for the species for which a permit is sought.

(d) An applicant for an exotic species permit [~~Exotic Species Permit~~] whose facility is located within the harmful or potentially harmful exotic species exclusion zone as defined in §57.111 of this title (relating to Definitions) must submit an emergency plan [~~Emergency Plan~~] to the department for review and approval. The plan shall include measures sufficient to prevent release or escapement of permitted harmful or potentially harmful exotic species into public water during a natural catastrophe (such as a hurricane or flood).

§57.118. Exotic Species Permit Issuance.

(a) The department may issue an exotic species permit [~~Exotic Species Permit~~] only to:

(1) an aquaculturist [~~a fish farmer~~] and only for species listed in §57.113(d), (e), and (k) of this title (relating to Exceptions);

(2) a wastewater treatment facility operator;

(3) department approved research programs; or

(4) a public aquarium for display purposes only.

(b) The department may issue an exotic species permit upon a finding by the department that:

(1) all application requirements as set out in §57.117 of this title (relating to Exotic Species Permit: Fee and Application Requirements) have been met;

(2) the aquaculture facility [~~fish farm~~] operated by the applicant and named in the permit meets or will meet the design criteria listed in §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(3) the applicant has complied with all provisions of the Parks and Wildlife Code, §66.007, §66.015, and these rules during the one-year period preceding the date of application.

(c) Permits issued for aquaculture facilities [~~fish farms~~], private facilities or wastewater treatment facilities under construction shall not authorize possession of harmful or potentially harmful exotic fish, shellfish or aquatic plants until such time as the department has certified that the aquaculture facility [~~fish farm~~], private facilities or wastewater treatment facility as-built meets the requirements in §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria).

§57.119. Exotic Species Permit: Requirements for Permits.

(a) A copy of the exotic species permit [~~Exotic Species Permit~~] shall be:

(1) made available for inspection upon request of authorized department personnel; and

(2) prominently displayed on the premises of the aquaculture facility [~~fish farm~~], private facilities or wastewater treatment facility named in the permit.

(b) Permittee must provide access to all facilities covered by the application to authorized department personnel during any hours in which operations pursuant to the exotic species permit are ongoing.

(c) If a permittee discontinues aquaculture [~~fish farming~~], research activities or public aquarium display involving harmful or potentially harmful exotic species or discontinues wastewater treatment, the permittee shall:

(1) immediately and lawfully sell, transfer or destroy all remaining individuals of that species in possession; and

(2) notify the department's Exotic Species Program Leader at least 14 days prior to cessation of operation.

(d) Upon a request, a permittee shall provide an adequate number of fish, shellfish, or aquatic plants to authorized department employees for identification and analyses.

(e) In the event that the aquaculture facility [~~fish farm~~], private facilities or a wastewater treatment facility of a permit holder appears in imminent danger of overflow, flooding, or release of harmful or potentially harmful exotic fish, shellfish or aquatic plants into public water, the permittee shall:

(1) immediately notify the department;

(2) immediately begin implementation of the department-approved emergency plan [~~department approved Emergency Plan~~].

(f) Except in case of an emergency, a holder of an exotic species permit authorizing possession of Litopenaeus [~~Litoenaeus~~] vannamei must notify the department at least 72 hours prior to, but not more than 14 [~~seven~~] days prior to any harvesting of permitted shellfish. In an emergency beyond the control of the permittee, notification

of harvest must be made as early as practicable prior to beginning of harvest operations.

(g) A holder of an exotic species permit authorizing possession of harmful or potentially harmful exotic species may sell or transfer ownership of live individuals only to the holder of a valid exotic species permit specifically authorizing possession of transferred species.

(h) Upon discovery of release or escapement of harmful or potentially harmful exotic fish or shellfish from any private facilities authorized in an exotic species permit, the permittee must immediately halt discharge of all private facility effluent from the aquaculture facility [~~fish farm~~]. If the permittee's private facility is located within an aquaculture [~~a fish farm~~] complex, upon discovery or release or escapement of harmful or potentially harmful fish or shellfish, the permittee must immediately halt discharge of all private facility effluent.

(i) A holder of an exotic species permit must notify the department's Exotic Species Program Leader in the event of escapement or release of harmful or potentially harmful exotic fish or shellfish, within two hours of discovery.

(j) All devices required in the exotic species permit for prevention of discharge of harmful or potentially harmful exotic fish, shellfish, or aquatic plants must be in place and properly maintained prior to and at all times such species are in possession.

(k) All private facility effluent discharged from an aquaculture facility [~~a fish farm~~] holding exotic harmful or potentially harmful species must be routed through all devices for prevention of discharge of exotic species as required in the permit.

(l) A permittee must notify the department's Exotic Species Program Leader in the event of change of ownership of the aquaculture facility [~~fish farm~~] named in that permittee's exotic species permit. Notification must be made immediately.

(m) Permits are not transferable from site to site.

§57.120. Exotic Species Permit: Expiration and Renewal.

(a) An exotic species permit [~~Exotic Species Permits~~] required by these rules expires on December 31 of the year issued.

(b) The department may renew an exotic species permit [~~Exotic Species Permit~~] upon finding that:

(1) the applicant has met application requirements in §57.117 of this title (relating to Exotic Species Permit: Fee and Application Requirements);

(2) the facility will meet all applicable facility design criteria listed in §57.129 of this title (relating to Exotic Species Permit: Private Facility Criteria);

(3) the applicant has complied with all provisions of the Parks and Wildlife Code, §66.007, §66.015, and these rules during the one-year period preceding the date of agency action on the application for renewal; and

(4) the applicant has submitted a renewal application and all required annual reports to the department as required in §57.123(a) and (b) of this title (relating to Exotic Species Permit Reports).

§57.121. Exotic Species Permit--Amendment.

(a) Exotic species permits may be amended upon a finding by the department that:

(1) the applicant has complied with all provisions of the Parks and Wildlife Code, §66.007, §66.015, all provisions of the [~~conditions in~~] permit, and these rules during the one-year period preceding the date of application;

(2) the applicant has met all applicable application requirements under §57.117 of this title (relating to Exotic Species Permit--Fee Application Requirements); and

(3) the facilities as altered will meet the private facility criteria in §57.129 of this title (relating to Exotic Species Permit).

(b) Exotic species permits must be amended to reflect any:

(1) addition or deletion of species of harmful or potentially harmful exotic fish, shellfish, or aquatic plants held pursuant to the permit;

(2) intended redistribution of harmful or potentially harmful fish, shellfish, and aquatic plants into private facilities not authorized in the permit;

(3) change in methods of preventing discharge of harmful or potentially harmful exotic fish, shellfish, and aquatic plants;

(4) change in discharge of private facility effluent from aquaculture facilities [~~fish farms~~] or wastewater treatment facilities; and

(5) change in existing design criteria listed in §57.129 of this title (relating to Exotic Species Permit--Private Facility Criteria).

(c) Applicants seeking amendment of exotic species permits, including those issued prior to January 23, 1992, must meet all application requirements listed in §57.117 of this title (relating to Exotic Species Permit--Fee and Application Requirements) and facility design criteria listed in §57.129 of this title (relating to Exotic Species Permit--Private Facility Criteria).

§57.122. Appeal.

An opportunity for hearing shall be provided to the applicant or permit holder for any denial of an exotic species permit or a triploid grass carp permit or where the terms of issuance are different from those requested by the applicant.

(1) Requests for hearings shall be made in writing to the department no more than 30 days from receipt of the denial notification.

(2) All hearings shall be conducted in accordance with the rules of practice and procedure of the State Office of Administrative Hearings and applicable provisions of the Government Code [~~Texas Parks and Wildlife Department and the Administrative Procedure Act~~].

§57.123. Exotic Species Permit Reports.

(a) The exotic species permit [~~Exotic Species Permit~~] holder shall submit an annual report that accounts for importation, possession, transport, sale, transfer or other disposition of any harmful or potentially harmful exotic species handled by the permittee. This report shall be submitted on forms provided by the department with the application and shall be due January 10 of each year.

(b) An exotic species permit [~~Exotic Species Permit~~] holder who has imported, possessed, transported, transferred or sold triploid grass carp shall provide a copy of each exotic species transport invoice issued and a copy of each triploid grass carp certification received by the permittee for triploid grass carp purchased during the past year with their annual report.

§57.124. Triploid Grass Carp; Sale, Purchase.

(a) Triploid grass carp may be sold only by a holder of an exotic species permit authorizing possession of triploid grass carp, and only to:

(1) a person in possession of a valid exotic species permit authorizing possession of triploid grass carp; or

(2) a person in possession of a valid triploid grass carp permit, and only in an amount less than or equal to that number specified in the permit.

(b) A person who holds a valid triploid grass carp permit may purchase triploid grass carp only from a Texas aquaculturist [~~fish farmer~~] in possession of a valid exotic species permit authorizing possession of triploid grass carp, and only in an amount less than or equal to that number specified in the triploid grass carp permit.

(c) A holder of an exotic species permit may obtain triploid grass carp only from:

(1) the holder of a valid exotic species permit authorizing possession of triploid grass carp; or

(2) a lawful source outside of the state.

(d) An aquaculturist [~~A fish farmer~~] in possession of an exotic species permit must notify the department not less than 72 hours prior to taking possession of any and all shipments of triploid grass carp received from any source. Notification must include:

(1) number of triploid grass carp being purchased;

(2) source of triploid grass carp;

(3) final destination of triploid grass carp;

(4) name of certifying authority who conducted triploid grass carp certification; and

(5) name, address and aquaculture [~~fish farmer's Aquaculture~~] license number (if applicable) of both shipper and receiver.

§57.129. Exotic Species Permit: Private Facility Criteria.

(a) The aquaculture facility [~~fish farm~~] or wastewater treatment facility must be designed to prevent discharge of water containing adult or juvenile harmful or potentially harmful exotic species, their eggs, seeds or other reproductive parts from the permittee's property.

(b) Aquaculture facilities [~~Fish farms~~] holding harmful or potentially harmful exotic fish or shellfish shall have at least three appropriately designed and constructed permanent screens placed between any point in the aquaculture facility [~~fish farm~~] where harmful or potentially harmful exotic fish or shellfish are intended to be in water on the aquaculture facility [~~fish farm~~] and the point where private facility effluent first leaves the aquaculture facility [~~fish farm~~].

(1) Screen mesh shall be of an appropriate size for each stage of exotic fish or shellfish growth and development.

(2) One screen must be permanently affixed in front of the final discharge pipe in the harvest structure and remain in place while the pond is in use. This screen and backing material must be of sufficient strength to withstand a water level differential of the height of the discharge area.

(3) At those facilities which discharge into public waters, one screen must be secured over the terminal end of the discharge pipe at all times. This screen must be secured in such a fashion as to prevent escape of permitted species. A second, additional screen must be secured over the terminal end of the discharge pipe during all harvest activities.

(4) Screens must be designed and constructed such that screens can be maintained and cleaned without reducing the level of protection against release of harmful or potentially harmful exotic fish or shellfish. The department may approve alternate methods of preventing discharge of harmful or potentially harmful exotic fish or shellfish upon a finding that those methods are at least as effective in preventing discharge of adult or juvenile harmful or potentially harmful exotic species, their eggs, seeds, or other reproductive parts from the permittee's property. The point of discharge of all mechanical harvesting devices must be double screened to prevent escapement of harmful or potentially harmful fish or shellfish.

(c) An aquaculture facility that is [~~Fish farms which are~~] to contain species or hybrids of species listed in §57.113 of this title (relating to Exceptions) and wastewater treatment facilities containing permitted exotic species which are within the 100-year flood plain, referred to as Zone A on the National Flood Insurance Program Flood Insurance Rate Map, must be enclosed within an earthen or concrete dike or levee constructed in such a manner to exclude all flood waters and such that no section of the crest of the dike or levee is less than one foot above the 100-year flood elevation. Dike design or construction must be approved by the department before issuance of a permit.

(d) An aquaculture facility [~~Fish farms~~] containing harmful or potentially harmful exotic shellfish shall be capable of segregating stocks of shellfish which have not been certified as free of disease from other stocks of shellfish on that aquaculture facility [~~fish farm~~].

(e) An aquaculture facility [~~A fish farm~~] containing harmful or potentially harmful exotic fish or shellfish must have in place security measures designed to prevent unrestricted or uncontrolled access to any private facilities containing harmful or potentially harmful exotic fish or shellfish. Security measures must prevent unauthorized removal of such species from the fish farm.

(f) For aquaculture facilities [~~fish farms~~] that are part of an aquaculture [~~a fish farm~~] complex, the following additional facility standards shall apply.

(1) Each permittee shall maintain in the common drainage at least one screen for preventing the movement of harmful or potentially harmful exotic fish or shellfish between the point where private facility effluent from the permittee's private facility [~~fish farm~~] enters the common drainage and each point where an adjacent aquaculturist's [~~fish farmer's~~] private facility effluent enters the common drainage. The adequacy of design and construction of such screens or other structures shall be determined by the department as provided in subsection (a)(1) of this section.

(2) Each permittee within the complex must have authority to stop the discharge of private facility effluent from the complex in the event of escapement or release of such fish or shellfish from that permittee's private facility [~~fish farm~~].

§57.130. Exotic Species Interstate Transport Permit.

(a) Transport of live harmful or potentially harmful exotic species originating from a point of origin outside the state of Texas and being transported through Texas to a destination outside of the state of Texas is prohibited except by the holder of an exotic species permit or an exotic species interstate transport permit [~~Exotic Species Permit or an Exotic Species Interstate Transport Permit~~].

(b) Anyone transporting live harmful or potentially harmful exotic species must provide documentation accounting, collectively, for all exotic species being transported.

§57.131. Exotic Species Interstate Transport Permit: Application and Issuance.

(a) The department shall charge a nonrefundable exotic species interstate transport permit. [~~Exotic Species Interstate Transport Permit~~] application fee as specified in Chapter 53 of this title (relating to Finance) [~~of either:~~]

[~~(1) $25 for individual permits; or~~]

[~~(2) $100 for an annual permit.~~]

(b) To apply for an exotic species interstate transport permit [~~Exotic Species Interstate Transport Permit~~] an applicant shall:

(1) complete and submit an exotic species interstate transport permit [~~Exotic Species Interstate Transport Permit~~] application on a form provided by the department;

(2) remit to the department's Exotic Species Program Leader all applicable fees.

(c) An applicant for an exotic species interstate transport permit [~~Exotic Species Interstate Transport Permit~~] shall provide documentation upon request from the department necessary to identify any harmful or potentially harmful exotic species and source of origin of the species for which the permit is sought.

(d) The department may issue an exotic species interstate transport permit [~~Exotic Species Interstate Transport Permit~~] upon a finding that all provisions of subsections (a)-(c) of this section have been met.

§57.132. Exotic Species Interstate Transport Permit: Permittee Requirements.

(a) A copy of the exotic species interstate transport permit [~~Exotic Species Interstate Transport Permit~~] shall be made available for inspection immediately upon request of authorized department personnel.

(b) Permittee must provide access to shipments of exotic species to authorized department personnel during the effective date of the permit.

(c) Permittee must notify the department's Exotic Species Program Leader in writing or by facsimile transmission at least 72 hours prior to transport of live harmful or potentially harmful exotic species indicating transport date, intended transportation route, and name and physical address of recipient.

(d) While transporting harmful or potentially harmful exotic species within the state of Texas, a holder of an exotic species interstate transport permit [~~Exotic Species Interstate Transport Permit~~] must notify the department's Exotic Species Program Leader in the event of escapement or release of harmful or potentially harmful exotic species within two hours of release.

(e) Except as provided by the terms and conditions of the exotic species interstate transport permit [~~Exotic Species Interstate Transport Permit~~], offloading or transfer of shipments of harmful or potentially harmful exotic species in the state of Texas is prohibited.

§57.133. Exotic Species Interstate Transport Permit: Expiration and Renewal.

(a) An exotic species interstate transport permit expires [~~Exotic Species Interstate Transport Permits expire~~] as stated on the permit.

(b) A separate exotic species interstate transport permit [~~Exotic Species Interstate Transport Permit~~] must be issued for each vehicle, trailer or other such transporting unit when transporting live harmful or potentially harmful species through the state.

§57.134. Wastewater Discharge Authority.

(a) An applicant for an initial exotic species permit must provide the following:

(1) written documentation demonstrating that the applicant possesses the appropriate valid wastewater discharge authorization or has received an exemption from the Texas Commission on Environmental Quality if the aquaculture facility, aquaculture complex, [~~fish farm, fish farm complex~~]or private facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or

(2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.

(b) An applicant for an amendment or a renewal of an exotic species permit must provide the following:

(1) written documentation demonstrating that the applicant possesses or has timely applied for and is diligently pursuing the appropriate wastewater discharge authorization or exemption from the Texas Commission on Environmental Quality in accordance with 30 TAC Chapter 321, Subchapter O, if the aquaculture facility, aquaculture complex, [~~fish farm, fish farm complex~~] or private facility is designed such that a discharge of waste into or adjacent to water in the state will, or is likely to occur; or

(2) adequate documentation to demonstrate that the facility is designed and will be operated in a manner such that no discharge of waste into or adjacent to water in the state will, or is likely to occur.

(c) An exotic species permittee whose wastewater discharge authorization or exemption is revoked, suspended or annulled by the Texas Commission on Environmental Quality will be treated as an applicant for an initial permit under subsection (a) of this section.

§57.136. Penalties.

The penalties for violation of this subchapter are prescribed by Parks and Wildlife Code, §66.012 and Agriculture Code, §134.023.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200603654
Ann Bright
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Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 63. BOARD OF TRUSTEES

34 TAC §63.3

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code §63.3, concerning Election of Trustees (Nomination Process). The proposed amendments concern the election of trustees, and propose changes to the guidelines for the petitions that are required in order for interested parties to qualify themselves as candidates for the ERS Board of Trustees election.

Section 63.3(2) changes the information required for the petitions needed to qualify candidates for the ERS Trustee election. The current rule requires that eligible voters must provide their signature, printed name and full social security number on the

petition in order for the signature to be valid. The proposed rule requires the signature, printed name, ZIP code and only the last four digits of the social security number in order for the signature to be valid. The proposed rule also provides that if a person signs more than one petition, that person's signature may not be counted on any petition.

Paula A. Jones, General Counsel, has determined for the first five-year period this amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule as proposed.

Ms. Jones has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the rule will be that future trustee elections will be administered in a more effective manner, and the privacy of persons signing these petitions will be better protected. There will be no affect on small businesses. There are no anticipated economic costs to persons who are required to comply with this rule as proposed.

Comments on the proposed amendments may be submitted to Paula A. Jones, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207 or you may e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, August 21, 2006, at 10:00 a.m.

The amendments are proposed under the Government Code, §815.003 and §815.102, which provide authorization for the Board to adopt rules necessary to nominate and elect trustees and to carry out other business of the Board.

The proposed amendments do not affect any other statutes, articles, or codes.

§63.3. Election of Trustees (Nomination Process).

Names may be placed in nomination for the office of trustee of the Employees Retirement System of Texas (system) in the following manner.

(1) (No change.)

(2) The signature of each person on a petition must be accompanied by that person's printed name, ZIP Code and the last four digits of the person's social security number. No person may sign a petition for more than one candidate. To do so will cause the signatures of the person to be disqualified on all petitions.

(3) - (4) (No change.)

(5) Reproduced or fax copies of signed petitions are not permitted and will be disqualified.

(6) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603639
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 867-7421

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CHAPTER 67. HEARINGS ON DISPUTED CLAIMS

34 TAC §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, 67.21, 67.23, 67.25, 67.27, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.61, 67.63, 67.65, 67.69, 67.71, 67.73 - 67.75, 67.77, 67.79, 67.81, 67.83, 67.85, 67.87, 67.89, 67.91, 67.93, 67.95, 67.97, 67.99, 67.101, 67.103, 67.105, 67.107 - 67.109

The Employees Retirement System of Texas ("ERS") proposes amendments to 34 Texas Administrative Code, Chapter 67, concerning Hearings on Disputed Claims. Proposed new §67.74 and §67.108 and amendments to §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, 67.21, 67.23, 67.25, 67.27, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.61, 67.63, 67.65, 67.69, 67.71, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.85, 67.87, 67.89, 67.91, 67.93, 67.95, 67.97, 67.99, 67.101, 67.103, 67.105, 67.107, and 67.109 are proposed in order to update the rules for changes made in the Texas Government Code ("Government Code") and the Texas Insurance Code ("Insurance Code") regarding administrative appeals procedures with respect to programs administered by ERS and for other reasons provided herein. The following describes the proposed amendments and additions and the reasons for the proposed changes.

1. General Revisions

The amendments to §§67.1, 67.3, 67.5, 67.7, 67.9, 67.11, 67.13, 67.15, 67.17, 67.19, 67.21, 67.23, 67.25, 67.27, 67.31, 67.33, 67.35, 67.37, 67.39, 67.41, 67.43, 67.45, 67.47, 67.49, 67.51, 67.53, 67.55, 67.57, 67.61, 67.63, 67.65, 67.69, 67.71, 67.73, 67.75, 67.77, 67.79, 67.81, 67.83, 67.85, 67.87, 67.89, 67.91, 67.93, 67.95, 67.97, 67.99, 67.101, 67.103, 67.105, 67.107, and 67.109 include nonsubstantive revisions to capitalize terms defined by §67.3 and §67.23 and/or to reorganize and clarify the meaning of certain terms and phrases. These proposed amendments and new rules also address confidentiality issues arising under the Federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104 - 191) ("HIPAA") and rules promulgated pursuant to HIPAA and other laws pertaining to the privacy and confidentiality of medical, psychiatric and health information. Further, the amendments and additions to chapter 67 clarify the applicable procedures and rules governing contested case proceedings before the ERS Board of Trustees ("Board") and the delegation of the Board's authority to decide appeals from ERS determinations in accordance with applicable law. The Board's authority to delegate its authority to decide contested case matters is provided by Government Code §815.511(d) and Insurance Code §1551.360.

2. §67.1. Purpose and Scope

Section 67.1 is amended to clarify that chapter 67 provides the exclusive procedural rules in ERS proceedings as provided by Government Code §815.102(b), and that the rules do not change the powers of the Board or parties to ERS proceedings. Also, the rules do not waive any immunities available to ERS, its trustees, officers, employees, agents, administering firms and insurers. The amendments are consistent with the premise that rules of procedure are not intended to modify the substantive rights of affected parties. The amendments also clarify that, as adopted by §67.1(c), the Texas Rules of Civil Procedure ("Tex. R. Civ. P.") apply to ERS proceedings to the extent consistent with the

provisions of chapter 67 or the Texas Administrative Procedure Act (Government Code §§2001.001 et seq.) ("APA"). The Tex. R. Civ. P. provide various "gap filling" procedural rules to govern procedural matters not specifically addressed in chapter 67. However, where the provisions of the APA conflict with the Tex. R. Civ. P. or chapter 67, the requirements of the APA and chapter 67 control respectively in ERS proceedings.

3. §67.3. Definitions

Section 67.3 is amended to clarify the definition of "Agency" because specific reference excluding the Texas Workers' Compensation Commission from the definition is no longer necessary due to recent changes in law.

A new definition for "Authorized Representative" is added to clarify that attorneys and non-lawyers may represent parties in ERS proceedings.

The definition of "Contested Case" is deleted because the term is subsumed in the amended definition of "Proceeding."

The definition of "Executive Director" is amended to include her designee within the scope of the defined term. Pursuant to Government Code §815.511(d) and Insurance Code §1551.360(b), the Executive Director may delegate her duties to her designee. The definition is amended to encompass the actions of the Executive Director's designee as authorized by the above statutes.

The definition of "Order" is clarified to include orders by the Executive Director or her designee as well as the Board or its designee.

The definition of "Pleading" is amended to clarify the scope and types of legal documents that fall within the ambit of the definition and thereby provide additional guidance to Parties in ERS proceedings as to when the procedural requirements pertaining to Pleadings apply.

The definition of "Proceeding" is amended to clarify the scope of the definition. Proceedings include, but are not limited to contested case matters. The term includes other matters as stated in the definition. The amendment provides additional guidance to parties regarding the application of chapter 67 rules to all matters within the scope of the defined term.

4. §67.5. Appeal of Denied Claims

Section 67.5 is amended to change the title of the section to "Appeals" because appeals may include ERS matters other than the denial of claims. The section is further amended to clarify that appeals relating to ERS actions apply to not only the denial of benefit claims by ERS, but other matters for which appeal rights are conferred by statute. Such rights include, but are not limited to the assessment of sanctions and overpayment obligations as authorized by Government Code §815.109 and Insurance Code §1551.351. The amendment also establishes mandatory venue in Austin, Texas for ERS administrative hearings consistent with Government Code §815.511(f) and Insurance Code §1551.359. Further, new §67.74 provides telephonic hearing procedures to accommodate out-of-town parties and witnesses in many circumstances. The new rule codifies ERS' long time practice regarding allowing telephone participation by parties and witnesses where appropriate.

Section 67.5(c) incorporates statutory limitations on standing to bring appeals as provided by Government Code §815.511(a) and Insurance Code §1551.356. The statutes do not confer standing on any person other than a "person aggrieved" as stated in §815.511(a) or an "employee, participant, annuitant, or covered dependent" participating in the Texas Employees Group Benefits Program established by chapter 1551 of the Insurance Code. Because there is no statutory standing conferred on the entities expressly excluded from standing under the proposed rule amendment, Section 67.5(c) clarifies that entities including healthcare providers and most types of ERS vendors do not have standing to bring administrative appeals relating to ERS matters.

Section 67.5 adds new subsection (d) to exercise the Board's statutory authority to delegate to the Executive Director its authority to decide appeals in ERS proceedings. The delegation of the Board's authority will promote timely, efficient and fair administrative decisions because the Executive Director will be able to decide such cases more frequently than the Board, and the Executive Director will have the benefit of the same record that is available to the Board at the time the final administrative decision is being made. Consequently, ERS Appellants will be able to obtain final agency decisions more quickly than under past practice in which such decisions were made during regularly scheduled Board meetings. In addition, the Executive Director will have discretion to refer particular cases to the Board for final determination when appropriate. Such referrals may be warranted when an appeal presents a previously unaddressed policy issue or other unusual circumstance justifying the Board's consideration.

Section 67.5(d) amendments clarify that the Executive Director may delegate her duties in either a particular matter or more generally. Government Code §815.202(f) grants the authority for the Executive Director to delegate her duties to other ERS employees.

5. §67.7. Filing and Service of Documents and Pleadings

Proposed amendments to §67.7(a) clarify that other rules in chapter 67 may require documents to be filed with someone other than the Executive Director. During the period in which a hearing examiner ("Examiner") has jurisdiction over a proceeding, pleadings and other documents are to be served on the Examiner rather than the Executive Director. The amendments to §67.7(b) clarifies existing practice and procedure that an Examiner loses jurisdiction after she issues a final proposal for decision. At that point, jurisdiction to make the final administrative decision in the appeal is conferred on the Board or its designee. Because of the transfer of jurisdiction, it is appropriate that all pleadings and documents be filed with the Executive Director because the Examiner no longer has any authority to take action in response to such filings.

The amendments to §67.7(d) clarify that service of documents and pleadings may be made to a party or to the party's authorized representative if one has been retained. This clarification is consistent with customary practice and procedure in litigation where service is to be made on a party's attorney if the party is represented.

Section 67.7(f) is amended to cross-reference new §67.108 which provides procedures for sanctions. Failure to serve opposing parties may warrant the imposition of sanctions, especially if the failure is intentional. Proper service is fundamental to providing fair and reasonable notice in contested case proceedings and the requirement should be properly enforced, if necessary, through appropriate sanctions.

6. §67.9. Computation of Time

Section 67.9(b) is amended to reflect that extensions of time may be granted by an agreement of the parties as well as by a motion showing good cause. If the parties agree to an extension, no harm will likely result from an order granting such a request. The proposed change recognizes and codifies the common practice of granting an agreed request for an extension of time in a contested case.

7. §67.13. Conduct and Decorum

Proposed amendments to §67.13 identify the applicable ethics standards that are observed in litigation and administrative proceedings generally, as well as in ERS proceedings, and they also clarify to whom the standards of conduct apply. The Texas Lawyers Creed and the Texas Disciplinary Rules of Professional Conduct are referenced with respect to the current ethical standards applicable to authorized representatives. They are appropriate standards because they provide the core basis for governing the conduct of lawyers in Texas. Reference to the "Code of Professional Responsibility" is deleted because it has been replaced by the "Texas Disciplinary Rules of Professional Conduct." Reference to the "Canons of Judicial Ethics" is deleted because the canons provide ethical standards for judges rather than lawyers. Because not all authorized representatives are lawyers, the rule is further clarified to reflect that it does not permit the unauthorized practice of law.

Section 67.13(b) is amended to reflect that an Examiner may not assess monetary payments for violations of the rule. The proposed change reflects that no statute authorizes the payment of trust funds for such purposes. As a matter of fairness, the change would apply equally to both ERS and other parties. Since state law does not authorize ERS to pay sanctions (payment of which could adversely impact the trust funds for which ERS is responsible) other parties should also not be subject to such penalties.

8. §67.21. Intervention

Proposed amendments to §67.21 change the deadline for filing a motion to intervene from fifteen to thirty days prior to the hearing on the merits or the Board's or its designee's consideration of an appeal. The change gives parties, the Examiner, and the final agency decision maker, additional time to respond to a motion to intervene and thereby avoid disruption of the proceedings that might result from a last minute attempt to intervene. The proposed change also clarifies that the time requirement applies to an attempt to intervene after the hearing on the merits but before the matter is submitted pursuant to §67.87 (relating to submission of appeals for a final administrative decision).

9. §67.27. Form and Content of Pleadings

The proposed amendments to §67.27(d) clarify that at various points in an ERS proceeding, the Examiner, Executive Director, the Board or its designee have authority to issue orders, and each pleading should be addressed to the person or entity with jurisdiction to act on the request. For example, under §67.43(d), the Executive Director has sole authority to decide a motion to reinstate an appeal that has been dismissed for a violation of the rule. Similarly, the Board's designee has the discretion to determine whether to grant a request for oral argument under §67.87. To avoid confusion, pleadings should be addressed to the person or entity with jurisdiction to rule on the party's request.

The proposed amendments to §67.27(d) also clarify that pleadings should include references to supporting authorities. Citation of authorities provides guidance to the parties and the decision maker regarding the legal basis for the relief requested.

10. §67.31. Written Motions

The proposed amendments to §67.31 provide additional guidance as to whom motions should be addressed. By directing parties to file motions with the person or agency authorized to rule on the motion, the amended rule helps ensure that requests for relief are received by the appropriate official or entity in a timely manner. The changes also clarify the general rule that a movant must give prior notice of at least three business days before a motion may be granted. The proposed change (as well as similar changes found elsewhere in the chapter) makes clear to parties that they may not minimize the amount of effective notice by filing a motion on a Friday with the expectation that Saturday and Sunday (and possibly a legal holiday) may count toward the prior notice requirement.

The proposed amendments also expressly state that the notice requirements of the rule may be excused on a showing of good cause. The exception recognizes that from time to time, unexpected events or emergencies may make problematic the giving of three business days prior notice before a motion is ruled upon.

11. §67.33. Amended Pleadings

Proposed amendments to §67.33 will establish a thirty day deadline for filing an amended pleading without leave to amend. The proposed revisions also provide that a motion for leave to amend pleadings must be filed no later than three business days prior to hearing. The changes are designed to assure that parties receive reasonable notice of amended pleadings so that they have a meaningful opportunity to respond.

12. §67.35. Incorporation of Board Records by Reference

Section 67.35 is amended to change the title of the section to "Incorporation of Board or ERS Records by Reference." The section is further amended to clarify that an adoption of a document by reference in a pleading does not relieve parties of their burden of proof to produce admissible evidence to support their claims.

13. §67.39. Notice and Service

Proposed amendments to §67.39 clarify the procedures in an appeal for requesting additional issues that were not included in the initial notice of hearing issued by ERS and served on the parties. The proposed revised rule requires that such a request be served not less than thirty days prior to hearing as compared to ten days under the current rule. Also, the amended rule specifies that a response to a motion for additional issues must be filed and served within fourteen days from the date the motion is served.

The proposed amendments provide an orderly procedure that avoids undue surprise resulting from an attempt to interject new issues on appeal at the eve of trial. Occasionally in ERS proceedings, a party may seek to interject issues that may be irrelevant, prejudicial or simply not within ERS' or the Examiner's jurisdiction to consider. Therefore, the procedure also helps ensure that adequate time is allowed to analyze a request for additional issues and to accept only those matters that are within ERS' or the Examiner's jurisdiction and that are material and relevant. The proposed amendments also provide seven as opposed to five days notice to the parties of the additional issues to be decided. The additional two days gives the parties extra time to respond to the inclusion of new issues. For example, an opposing party may request a continuance where the inclusion of new

issues provides good cause for additional discovery or other actions related to the new matters.

14. §67.41. Contents of Notice

Section 67.41 is amended to change the title of the section to "Contents of Initial Notice and Amendments." The section is further amended to revise the procedure for amending the initial notice of hearing in an ERS proceeding. At times, the information available to ERS is not sufficient to state all appeal issues in detail at the outset of a contested case. For example, in an overpayment situation ERS may not have complete information regarding the amounts owed by an appellant, although a determination may have been made that the appellant received some amount of overpayments. The revised procedure permits the Executive Director to file an amended or supplemental notice of the issues to provide a more detailed statement once additional information is received.

The proposed amendments also clarify that parties may request another party to file a more definite statement of the issues when appropriate. The deadlines for making and responding to such a request are unchanged.

15. §67.43. Dismissal without Hearing

Proposed amendments to §67.43(b)(3) will clarify that an appeal may be dismissed for failure to comply with an order from the Executive Director as well as from an Examiner. This change reflects the Executive Director's authority to issue certain orders both before and after the Examiner has jurisdiction over an ERS proceeding.

Proposed amendments to §67.43(d) reflect the current rule that all dismissals under the rule are mandatory rather than conditional. The amendments also provide a thirty day deadline for filing a motion to reinstate with the Executive Director after a dismissal. The thirty days begins from the date an order of dismissal is served. The amendments also clarify the existing practice and procedure that the Executive Director has sole discretion to permit a reinstatement based on a showing of good cause, and that her decision constitutes final agency action.

The amendments promote an orderly process for dealing with failures to prosecute appeals and encourage diligence by the parties in seeking administrative remedies which is consistent with the Tex. R. Civ. P. 165a. Also, requiring mandatory dismissal subject to reinstatement for good cause helps avoid delays to appellants that otherwise may result from the dilatory practices of other parties. For example, when an appellant fails to appear for hearing without good cause and afterward requests another hearing, his request is contrary to the interests of other parties in other appeals to have their day in court. In order to avoid this inequitable result and to conserve ERS' trust fund resources, the rule requires a mandatory dismissal subject to reinstatement for good cause. This approach parallels common procedural practice in state courts.

16. §67.45. Prehearing Conference

Section 67.45(b) is amended to specify that a motion or notice relating to a prehearing conference shall describe the subject matter of the conference with reasonable specificity. The amendment is proposed so that parties are assured reasonable notice of the subject(s) to be addressed at a prehearing conference. Parties will be better prepared to address issues raised in a prehearing conference if they have prior notice of the subject matter.

17. §67.47. Postponements or Continuances

Proposed amendments to §67.47 clarify that opposed motions for continuance must be supported by competent pleading and evidence showing good cause for the request. Tex. R. Civ. P. 251 - 253 (relating to motions for continuance) are expressly incorporated into the rule to make clear that the procedural requirements of those rules apply to opposed motions for continuance filed in ERS proceedings. The proposed amendments also clarify the requirements for showing good cause for a late filed motion for continuance.

The amendments to the rule emphasize the need to show good cause for an opposed continuance request in order to deter parties from requesting multiple continuances without showing substantial need or justification for the postponements. Multiple unreasonable continuances delay ERS proceedings and cause parties to incur additional unnecessary expenditure of time and resources in preparing and re-preparing for a hearing that is repeatedly continued.

18. §67.53. Presiding Officer

Proposed amendments to §67.53 include a new subsection (b) which identifies the Texas Code of Judicial Conduct as the source of ethical standards governing the conduct of Examiners in ERS proceedings. The proposed amendments also specify that Examiners shall conduct ERS proceedings in a fair and impartial manner, and they shall refrain from providing legal advice or guidance to any of the parties, other than with respect to minor procedural matters. Such actions are not consistent with the Examiner's proper function of being an impartial presiding officer, and they are not appropriate in ERS proceedings and are inconsistent with the statutory requirements with which Examiners are obligated to comply when conducting such proceedings.

19. §67.55. Order of Procedure

Proposed amendments to §67.55 clarify the procedures at hearings in ERS proceedings. Subsection (b) is modified to conform ERS' rule concerning burden of proof with its statutes addressing the matter: Government Code §815.511(c) and Insurance Code §1551.351(d). Each of the statutes specifies that the appellant in an ERS proceeding has the burden of proof on all issues, including issues in the nature of an affirmative defense.

The proposed amendments to §67.55(c) clarify the limits on the nature and scope of questions an Examiner may ask a witness. The proposed rule amendment discourages questions designed to assist parties in meeting their burden of proof or in rebutting evidence through cross-examination. Clarifying questions are appropriate as necessary to ensure that the record provides an accurate and complete account of the witnesses' testimony.

Revised §67.55(d) expressly states the procedure for invoking "The Rule" as provided in Tex, R. Civ. P. 267(a). The purpose of The Rule is to ensure that a witness' testimony is not modified in response to the testimony of another witness. Accordingly, when The Rule is invoked, witnesses (other than the parties and their authorized representatives) are asked to wait outside the hearing room until they are called to testify. They are also instructed not to discuss their testimony with anyone prior to being called to the stand. This procedure helps ensure that testimony is truthful and not tainted by what a witness might otherwise hear from other witnesses. The proposed amendment makes clear that the procedure may be invoked in ERS proceedings as provided by Tex. R. Civ. P. 267(a). The proposed amendments also provide for sanctions for a violation of The Rule. The sanctions provision provides a deterrent for witnesses and others who might be in-

clined to violate The Rule. Sanctions also provide a reasonable remedy when a party is prejudiced by a violation. The sanctions allowed are those described in §67.13, and do not include any monetary penalties. See the discussion regarding the proposed amendments to §67.13.

The proposed amendment to §67.55(g) revises ERS' rule regarding submission of additional evidence after a hearing on the merits of an appeal. The proposed change would require a party to move for the inclusion of additional evidence upon a showing of good cause. The movant would have to show that the new evidence was not reasonably known or knowable to him at the time of the hearing, or that another party had failed to provide discovery that would have disclosed the evidence.

The proposed amendments will help ensure that each party acts diligently and is prepared to make his case at the hearing on the merits. Conversely, the rule discourages a somewhat common practice in ERS proceedings in which a party uses the hearing to find out what he needs to prove and then asks that the hearing be continued while he seeks additional evidence to fill in any "gaps" in his proof. Through this tactic, a party may receive multiple opportunities to obtain and tailor his evidence in response to the other side's case. This practice is inefficient and costly in resources, sometimes causing lengthy delays in ERS appeals. Also, it is contrary to the customary adversarial process whereby parties have one opportunity after discovery and investigation to present their evidence at a trial on the merits. On the other hand, the good cause exception allows a diligent party who learns of new evidence at or after a hearing to get the evidence into the record. Finally, limiting the ability to ask for additional evidence makes the amendment consistent with state court and proper administrative practice. See also the discussion concerning proposed amendments to §67.53 and §67.55(c).

20. §67.61. Offer of Proof

The proposed amendments to §67.61 clarify the procedure for Examiners to ask clarifying questions in connection with an offer of proof. An offer of proof is a procedure to memorialize evidence that has been offered but not admitted into evidence. A party making an offer of proof shows what the evidence would have been if it had been admitted. The offer facilitates review of the Examiner's ruling denying admission of the evidence. Section 67.61(b) is clarified to ensure that clarifying questions concerning an offer of proof are confined to the limits described in the proposed amendments to §67.55(b). See the discussion of the proposed amendments to §67.55(b) regarding clarifying questions.

21. §67.65. The Record

The proposed amendments to §67.65(b) clarify the procedures used when evidence is offered after the record is closed. The record defines and limits the evidence that the Board or its designee may consider in deciding an ERS appeal. Under the current rule, new evidence may not be admitted absent a showing of good cause as to why the evidence could not reasonably have been presented at the hearing on the merits of the appeal. The proposed amendment emphasizes that newly offered evidence must also be relevant and material, and that the opposing party must have the opportunity to conduct cross-examination and offer rebuttal evidence in response to the new evidence.

The opportunity to challenge an opponent's evidence is a fundamental tenet of the adversarial process. Rebuttal evidence and cross-examination are core tools used in contested cases to test the truthfulness, reliability and accuracy of evidence. If newly discovered evidence is admitted into evidence after the record closes, opposing parties must be given the same opportunity to test the evidence as they would have if the evidence were admitted at a hearing on the merits.

The proposed amendments also clarify that the Executive Director may be requested to consider new evidence after the record closes and the Examiner no longer has jurisdiction over the appeal. If a party requests admission of newly discovered evidence after an Examiner issues a final proposal for decision, the Executive Director will be responsible for ruling on the request. In addition, when a party offers evidence in connection with a motion to reinstate following a dismissal under §67.43, the Executive Director must decide whether or not to admit the evidence offered.

22. §67.69. Rules of Evidence

The proposed addition of §67.69(b) conforms the rule to current statutory and Board policy. The proposed addition requires that opinion evidence of a medical condition or cause must be based on reasonable medical probability and be supported by objective medical evidence. The proposed amendment also clarifies that subjective complaints of illness that are not corroborated by objective medical evidence may not support a finding of fact relating to an allegation concerning medical issues.

The proposed addition incorporates the policy stated in Government Code §814.203 which mandates that the ERS Medical Board's medical evaluation of ERS disability retirement claims be supported by "substantial, objective, medical evidence." Also, the proposed amendment reflects long-standing Board policy that findings of fact relating to medical issues must be supported by objective medical evidence. See Appeal of Sharon House, SOAH Docket No. 327-03-3111 (February 2005). In discussing its decision in that appeal, the Board noted that it had long required that findings concerning medical condition or causation must be supported by objective medical evidence. See e.g. The Appeal of Gwendolyn Woodard, SOAH Docket No. 327-99-1695 (April, 2000) (ERS Board Decision denying an appeal for benefits where there were no objective clinical findings that the appellant was unable to engage in any sedentary occupation). The Board stated that an award of disability retirement benefits that is not based on objective medical evidence does not provide reasonable assurance that a person claiming such benefits is truly disabled. If only subjective complaints of pain were sufficient to support such a claim, the trust fund would be subject to unwarranted liabilities by those members willing to overstate or falsely represent that they are suffering from disabling pain. In addition, some treating physicians could be tempted to assist patients who might make such improper claims because the award of disability benefits includes insurance to cover the doctor's further treatment of the patient. Also, requiring that findings on medical issues be supported by objective medical evidence is essential to protect the ERS trust fund and the participants in the trust fund from unmerited claims based on sincere, but speculative opinions by physicians and claimants. Accordingly, to ensure that disability retirement claims are awarded properly, the medical aspects of the claim must be supported by objective medical evidence. The Board concluded that because certain prior proposed finding of fact in House were not supported by objective medical evidence, and were in fact controverted by the objective medical evidence, they were violative of the Board's policy.

The proposed amendment is also consistent with current Texas case law requiring that expert opinions have a reliable scientific basis. See e.g. Merrell Dow Pharmaceuticals v. Havner, 953

S.W.2d 706, 714 (Tex. 1997) (stating that if the foundational data underlying opinion testimony are unreliable, an expert will not be permitted to base an opinion on that data because any opinion drawn from that data is likewise unreliable; and that if an expert's scientific testimony is unreliable, it is not evidence).

23. §67.73. Documentary Evidence

The proposed addition of §67.73(c) clarifies the procedures for protecting confidential medical, psychiatric and health information from public disclosure through the contested case process. Many ERS proceedings involve medical information that is protected from disclosure by law. See e.g. HIPAA and other laws pertaining to the privacy and confidentiality of medical and health information. Examples of such sensitive information could include evidence of adolescent drug abuse or eating disorders, sexually transmitted diseases and psychiatric disorders. In order to protect the privacy of appellants from the disclosure of such confidential and legally protected information, §67.73(c) provides a "sealing" procedure to protect against the disclosure of the information to persons other than the parties (including their authorized representatives and staff), the Examiner, the ERS Executive Director, the Board and its designee. In ERS proceedings, evidence that is not sealed is generally considered open for public inspection.

The proposed amendment provides exceptions to sealing for evidence showing fraud, other ERS policy violations warranting disciplinary action under ERS' jurisdiction, and a law enforcement exclusion. The application of Tex. R. Civ. P. 76a (relating to procedures for sealing "court documents") is expressly excluded. The requirements of Rule 76a predate HIPAA and appear inconsistent with the regulatory mandates and policy reflected therein. Further, the requirements of public notice, participation and hearing are not consistent with ERS rules and statutes limiting standing and making ERS member and participant information confidential and not subject to disclosure except in certain specifically enumerated circumstances. See e. g. Insurance Code §1551.356 (concerning standing to appeal in ERS proceedings); and Government Code §815.503 and Insurance Code §1551.063 (relating to the confidentiality of records). Also, the jurisdiction and remedial provisions of Rule 76a are not incorporated or referenced into the exclusive jurisdiction and remedies applicable to ERS proceedings. See Government Code §815.511(a) and (d) and Insurance Code §1551.351(d) (relating to exclusive jurisdiction in ERS proceedings) and Government Code §815.513 and Insurance Code §1551.014 (pertaining to exclusive remedies). Also, the procedures described in Rule 76a are inconsistent with the doctrine of exhaustion of administrative remedies. In addition, Rule 76a may only apply to ERS proceedings if it is expressly adopted by the Board pursuant to its rulemaking authority. Because the rule imposes excessive procedural burdens on the parties to ERS proceedings that are not consistent with the policies, plans, intent and purposes described above as well as other statutes governing ERS proceedings, the provisions of Rule 76a should not be adopted.

24. New §67.74. Telephonic Proceedings

Proposed new §67.74 is added to formalize ERS procedure regarding participation by telephone of appellants and witnesses. The proposed addition adopts substantially, the State Office of Administrative Hearings' rule concerning the same subject, 1 Texas Administrative Code §155.45. The proposed provision describes how a party may request a telephonic hearing and the exceptions and limitations applicable to such requests.

The option to participate by telephone in ERS proceedings may substantially relieve the burden on out-of-town appellants and witnesses who may be inconvenienced if required to travel to Austin for a hearing. However, the proposed rule also recognizes that participation by telephone may not be appropriate when it is important for the Examiner and the parties to observe a witness' demeanor while testifying. The proposed rule also addresses the importance of properly identifying witnesses who testify by telephone, protecting the record against coached testimony, and keeping witnesses separated. See the discussion regarding proposed amendments to §67.55.

25. §67.77. Introduction of Exhibits

Proposed amendments to §67.77(d) clarify ERS' procedures for filing and admission of late exhibits. Acceptance and admission of such exhibits would only be permitted upon a showing of good cause for the failure to offer the exhibit at the hearing. The reasons for this proposed amendment are as stated in the analysis regarding the proposed amendments to §67.55(g).

26. §67.81. Examiner's Report and Proposal for Decision

Section 67.81 is amended to change the title of the section to "Examiner's Proposal for Decision." The section is further amended primarily for purposes of reorganization. In addition, references in the section to the Examiner's "report," as well as similar changes proposed in other parts of chapter 67, clarify the scope and nature of what the Examiner shall prepare for consideration by the Board and its designee. Preparation of a "report" that is separate and distinct from the proposal for decision is not consistent with the requirements of §2001.062(d) of the APA nor with Examiners' practice in ERS proceedings. Also, the substance of a "report" is included in the analysis section of a proposal for decision which summarizes the issues, positions of the party, the evidence and the applicable law concerning the appeal.

Proposed changes to §67.81(b) clarify the point at which jurisdiction over an appeal transfers from the Examiner to the Executive Director, Board and its Designee. The clarification conforms the rule to existing law and practice recognizing that the Examiner's jurisdiction ends with the service of his final proposal for decision after considering exceptions and replies to exceptions filed, if any. Also, the clarification will help avoid confusion by parties in ERS proceedings regarding the point at which jurisdiction is transferred from the Examiner back to ERS.

27. §67.83. Filing of Exceptions and Replies

Proposed amendments to §67.83(a) specify that an Examiner should file a response to exceptions to a proposal for decision and replies to exceptions, if any, within thirty days from the last timely filing of such pleadings.

The proposed change provides additional guidance to Examiners as to when their final proposal for decision should be filed with ERS. Also, the change helps insure that the Examiner's response will be filed in a timely manner consistent with the Examiner's need to consider carefully any exceptions and replies filed in connection with a proposal for decision.

28. §67.87. Oral Argument before the Board

Section 67.87 is amended to change the title of the section to "Submission of Appeals to the Board's Designee." The section is further amended to provide the procedures for the Board designee's review and final decision of ERS contested cases and other proceedings pursuant to the Board's authority

to delegate that power as authorized by Government Code §815.511(d) and Insurance Code §1551.360 and as provided in the proposed amendment to §67.5(d). The amendments provide that the Board's designee will decide contested cases and other proceedings by submission of the record unless good cause is shown for oral argument.

As previously discussed in the analysis regarding the proposed amendments to §67.5(d), delegation of the Board's authority to decide contested cases and other proceedings provides the means to decide cases expeditiously and efficiently. The Board's designee will be available to consider contested cases on a more frequent basis than with respect to the current practice of deciding cases at certain regularly scheduled Board meetings. Under the proposed delegation procedure, the time for deciding cases may be shortened by an average of three to four months. Because ERS appellants often are in immediate desire of the contested benefits, shortening the time for making final decisions on appeals will directly serve their interests.

The proposed amendments also provide the parties with the option to submit written arguments to the designee. This procedure is designed to provide the parties an opportunity to address any final arguments and comments to the final agency decision maker before the decision is made. Under current practice, parties are afforded an opportunity to address the Board before it makes its final decision on an appeal. The written argument procedure provides a corollary process with respect to cases decided by submission to the Board's designee. All written arguments must be limited to matters that are within the record.

The proposed amendments favor the submission process over oral presentations because the former procedure fosters a more timely and efficient disposition of appeals. However, where a contested case presents novel or complicated issues warranting oral arguments, questions and discussion between the Board's designee and the parties, the proposed rule changes permit the option of allowing oral argument on a showing of good cause.

29. §67.89. Presentation of Contested Cases to the Board

Section 67.89 is amended to change the title of the section to "Presentation of Contested Cases to the Board or its Designee." The section is further amended to clarify that the procedures for oral argument to the Board shall also apply to oral arguments to the Board's designee when such proceedings are permitted.

30. §67.91. Form, Content and Service of Orders

The proposed amendments to §67.91(b) add additional criteria for modifying or deleting proposed findings of fact and conclusions of law. Government Code §815.511(d) and Insurance Code §1551.357 authorize the Board to modify, refuse to accept, or delete any proposed finding of fact or conclusion of law contained in a proposal for decision, or make alternative findings of fact or conclusions of law. These statutes also specifically authorize the Board to delegate its authority to make such changes to its designee. The Board or its designee must state the reasons for such changes and may adopt rules relating to this procedure.

The additional criteria for adding, modifying or deleting proposed findings of fact and conclusions of law would apply when a proposed finding or conclusion is:

* Based on a medical opinion that is not supported by objective medical evidence, or is not based on reasonable medical probability;

* Confusing, incomplete or misleading; or

* Immaterial or irrelevant to the issues.

The first criteria is added to conform to the Board's policy and applicable law that findings of fact and conclusions of law relating to medical issues must be based on objective medical evidence and otherwise reliable. See the discussion concerning proposed amendments to §67.69. The remaining additional criteria are appropriate to correct proposed findings of fact that are unclear, internally inconsistent, not fully articulated, may result in a misunderstanding of the facts and issues or interject matters that are extraneous to the issues on appeal. Correction of such errors helps assure that ERS appeals are decided correctly based on the facts and law, and that the reasons for the decision are articulated in a concise, accurate and understandable manner.

The proposed amendments also clarify that the procedures stated in the rule apply to the Board's designee as well as the Board. In addition, the changes state that correction of nonsubstantive typographical errors do not need to be explained because the need is evident on the face of the document and does not affect the legal consequences of the proposed finding of fact or conclusion of law.

31. §67.93. Administrative Finality

The proposed amendments to §67.93 clarify when an administrative decision in a contested case becomes final. In addition to the criteria included in the current rule, the amendment references the adoption by the Board, or its designee, of a final order and the failure to file a motion for rehearing within the time prescribed by §67.97. This addition clarifies that an order will become final when no motion for rehearing is timely filed.

The proposed addition of §67.93(b) clarifies that the requirement for filing a motion for rehearing applies to any decision in ERS proceedings that constitutes final agency action. For example, the denial of a motion to reinstate under §67.43(d) constitutes final agency action subject to a motion for rehearing. The failure to file a motion for rehearing may constitute a failure to exhaust administrative remedies.

The proposed change conforms to existing law requiring the filing of a motion for rehearing as a prerequisite for judicial review. APA §2001.145(a). The purpose of a motion for rehearing is to apprise the agency of the error claimed and allow the agency an opportunity to correct the error. Suburban Util. Corp. v. Public Util. Comm'n, 652 S.W.2d 358, 364-365 (Tex. 1983); BFI Waste Sys. v. Martinez Environmental Group., 93 S.W.3d 570, 578 (Tex. App.-Austin 2002, pet. denied). "The timely filing of a motion for rehearing is jurisdictional." BFI Waste Sys., 93 S.W.3d at 578.

32. §67.101. Ex Parte Communications

The proposed amendments to §67.101 include the addition of subsection (c) to clarify that the prohibition against ex parte communications does not include communications between the Executive Director, the Board or its designee and their staff, including, but not limited to the ERS general counsel and staff experts. Such communications are permitted by APA §2001.061(c).

33. §67.107. Discovery Generally

The proposed amendments to §67.107 include a reference to Tex. R. Civ. P. 190.2 as the basis for defining certain time lines and limitations concerning discovery. Those limitations include a discovery completion deadline of thirty days before trial, a six hour limit per side on deposition questioning and a limit of 25

interrogatories per responding party (except for interrogatories made for the purpose of authenticating documents).

The discovery deadlines and limitations are generally appropriate for ERS proceedings because they provide a reasonable amount of discovery for each party, and the limits and deadlines may be modified by agreement as provided by rule 190.2.

34. New §67.108. Discovery Sanctions

A new proposed §67.108 is added to specify that the provisions of Tex. R. Civ. P. 215 (concerning sanctions) apply to the extent that they are consistent with the APA and do not involve monetary penalties. See the discussion of the proposed amendments to §67.13 for the reasons against allowing monetary sanctions in ERS proceedings. The proposed amendments also specify that an award of sanctions is subject to review by the Board or its designee, except as otherwise provided by APA §2001.201 and §2001.202 (concerning judicial enforcement of subpoenas, final orders, decisions and rules). Reservation to the Board and its designee of the authority to review sanctions orders is consistent with their statutory authority and jurisdiction over ERS contested case matters is discussed above.

35. §67.109. Witness Fees

The proposed amendments to §67.109 include the express addition of the requirement that the witness fee for a retained expert shall be paid by the party who retained the witness. The proposed amendment comports with the requirement of Tex. R. Civ. P. 195.7 which imposes the costs associated with deposing a retained expert on the party who retained him.

Paula A. Jones, General Counsel, has determined for the first five-year period these proposed new and amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules as proposed.

Ms. Jones has also determined that for each year of the first five years these proposed new and amended rules are in effect, the anticipated public benefits resulting from them include enhanced fairness, clarity, effectiveness and efficiency of the procedures governing ERS contested case proceedings while protecting private medical and health information from undue disclosure in accordance with applicable law. There will be no affect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed new and amended rules may be submitted to Paula A. Jones, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail her at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, August 21, 2006, at 10:00 a.m.

The amendments and new rules are proposed under the Government Code, §815.102 which provides authorization for the ERS Board of Trustees to adopt rules for hearings on contested cases or disputed claims. In addition, Insurance Code, §1551.052 authorizes the Board of Trustees to adopt rules consistent with the chapter as it considers necessary to implement the chapter and its purposes.

The proposed new and amended rules apply to all proceedings involving programs administered by ERS, including Government Code Title 8, Insurance Code Chapters 1551 and 1552, Government Code Chapters 615 and 609 and do not affect any other statutes, articles, or codes.

§67.1. Purpose and Scope.

(a) Purpose of chapter. The purpose of this chapter is to provide an orderly and efficient system of procedure before the Board of Trustees ("Board") of the Employees Retirement System of Texas ("ERS") or its designee to facilitate the administration of the laws of the state within its jurisdiction. This chapter [~~chapter's sections~~] shall be given a fair and impartial construction to attain these objectives.

(b) Scope of chapter. This chapter shall exclusively govern the procedure for [~~the institution, conduct, and determination of~~] all Proceedings [~~causes and proceedings~~] before the Board, its designee or ERS [~~of Trustees~~] where notice and hearing are required. In accordance with §815.102(b), Government Code, this chapter supersedes and replaces all rules of procedure promulgated by the State Office of Administrative Hearings ("SOAH") in Proceedings originating with ERS. This chapter [~~chapter's sections~~] shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the Board, its designee, ERS [~~of Trustees~~] or the substantive rights of any person. Nor shall this chapter have the effect of waiving the sovereign (governmental) or official immunity of ERS, its trustees, officers, employees, agents, Administering Firms and Insurers.

(c) Texas Rules of Civil Procedure. Proceedings under this chapter shall be conducted in accordance with the Texas Rules of Civil Procedure (including future amendments thereto), except where such rules conflict with a provision of this chapter or the Texas Administrative Procedure Act (Government Code §§2001.001 et seq.) ("APA"), in which event the provision of this chapter or the APA shall control.

§67.3. Definitions.

The following words and terms, when used in this chapter [~~Chapter~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the Legislature [~~legislature~~], the courts, or any publicly funded institution [~~the Texas Workers' Compensation Commission, the institutions~~] of higher education) which makes rules or determines contested cases.

(2) Authorized Representative--An attorney or other person legally authorized to represent a Party pursuant to §67.23 of this chapter (relating to representative appearances).

(3) [~~(2)~~] Board--The Board of Trustees of the Employees Retirement System of Texas.

[~~(3) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.~~]

(4) Examiner (hearings examiner)--Any person appointed by the Executive Director [~~executive director~~] to conduct hearings. This term also includes an Administrative Law Judge ("ALJ") [~~(ALJ)~~] appointed by SOAH [~~the State Office of Administrative Hearings (SOAH)~~] to preside at the hearing of a contested case when the Executive Director [~~of the Employees Retirement System of Texas~~] requests that SOAH conduct hearings.

(5) Executive Director--The Executive Director [~~executive director~~] of the Employees Retirement System of Texas or her designee.

(6) Insured--A Person [~~person~~] who is or claims to be eligible [~~entitled~~] to participate in the Texas Employees [~~Uniform~~] Group Benefits [~~Insurance~~] Program established by the Texas Employees [~~Uniform~~] Group [~~Insurance~~] Benefits Act, Texas Insurance Code, Chapter 1551 [~~Article 3.50-2~~].

(7) Member--A Person [~~person~~] who is a member, retiree, or beneficiary of any retirement system or program administered by the Board [~~board~~].

(8) Order--The whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the Executive Director, Board or its designee [~~board~~] in a matter other than rulemaking.

(9) Party--Each Person or Agency [~~person or agency~~] named or admitted as a party of record in a Proceeding [~~contested case~~]. This term also includes the definition set forth in §67.17 of this chapter (relating to parties defined).

(10) Person--Any natural person, partnership, company, corporation, association, governmental subdivision, or public or private organization of any character other than an Agency [~~agency~~].

(11) Pleading--A written concise statement [~~allegation~~] by a Party [~~the parties or the Employees Retirement System of Texas~~] of the issues on appeal arising from the Party's [~~their or its~~] respective claims or defenses in connection with a Proceeding. Pleadings may take the form of applications, petitions, notices of appeals and requests for hearing, complaints, briefs, exceptions, replies, motions, notices, or answers.

(12) Proceeding--Any hearing, investigation, inquiry, determination or other fact-finding or decision-making procedure, including, but not limited to [~~the denial of relief or the dismissal of an appeal if the matter is~~] a contested case under §2001.003(1) of the APA [~~the Administrative Procedure Act (Tex. Gov't Code, §§2001.001 et seq.)~~].

(13) Trustee--One of the duly elected or appointed members of the Board [~~decision making body defined as the board~~].

§67.5. Appeals [~~Appeal of Denied Claims~~].

(a) When the Executive Director [~~executive director~~] denies a claim, or takes other action for which an appeal is allowed by law, or takes other action for which an appeal is allowed by law, the Claimant [~~claimant~~] has 30 days from the date the determination [~~executive director's~~] letter is served on the Claimant [~~claimant~~] to file a written notice of [~~the~~] appeal as specified in §67.7 of this chapter (relating to filing and service of documents and Pleadings). The determination [~~denial~~] letter will inform the Claimant [~~claimant~~] of this right, as appropriate. Mandatory[~~. The~~] venue for an administrative hearing of the appeal will be in Austin, Texas[~~, unless for good and sufficient cause the executive director shall, in the interest of the Employees Retirement System of Texas, designate another place of hearing~~].

(b) The Executive Director [~~executive director~~] shall decide whether or not a notice of appeal is timely filed under this chapter [~~Chapter~~]. The Executive Director's [~~executive director's~~] decision [~~regarding venue of the hearing and whether or not a notice of appeal is timely filed~~] constitutes final Agency [~~agency~~] action on the issue and no administrative appeal from the Executive Director's [~~executive director's~~] decision is available.

(c) Standing. Unless otherwise provided by law, standing to pursue an administrative appeal under this chapter [~~Chapter~~] is limited to Members, Insureds, Insurers, [~~members, insureds, insurers,~~] respondents, appellants, Claimants, Administering Firms, beneficiaries of a deceased Member or Insured, [~~administering firms,~~] and Persons or Agencies [~~persons or agencies~~] permitted to intervene pursuant to §67.21 of this chapter [~~title~~] (relating to intervention [~~Intervention~~]). Healthcare providers under the Texas Employees Group Benefits Act, ERS vendors (other than Insurers and Administering Firms) and other third parties not specifically designated herein as having standing do not have standing to appeal ERS decisions.

(d) In accordance with §815.511(d), Government Code and §1551.360, Insurance Code, the Board delegates its authority to determine all Proceedings within its jurisdiction to the Executive Director. In her discretion, the Executive Director may request the Board to decide a particular Proceeding when appropriate.

(e) [~~(d)~~] The Executive Director [~~executive director~~] may delegate, either generally, or in a particular Proceeding, the duties of the Executive Director [~~executive director~~] under this chapter [~~Chapter~~] to another Person [~~person~~] who is employed by ERS [~~the Employees Retirement System of Texas~~].

§67.7. Filing and Service of Documents and Pleadings.

(a) Except as otherwise provided in these rules, [~~All~~]documents and Pleadings [~~pleadings~~] relating to any Proceeding [~~proceeding~~] pending or to be instituted before ERS, the Board or its designee [~~board~~] shall be filed with and/or served upon the Executive Director [~~executive director~~].

(b) Unless otherwise provided by applicable law or rule, in any Proceeding [~~contested case~~] referred by the Executive Director [~~executive director~~] to an Examiner [~~examiner~~] to conduct a hearing, all Parties [~~parties~~] shall file documents and Pleadings [~~pleadings~~] initially with the Examiner [~~examiner~~]. After the Examiner [~~examiner~~] issues a [~~his~~] final [~~report and~~] proposal for decision, including any responses to exceptions to the proposal for decision and replies to exceptions filed by the Parties, the Examiner no longer has jurisdiction over the Proceedings, and the Parties [~~and all proceedings before the examiner have concluded, parties~~] are then required to file all documents and Pleadings [~~pleadings~~] with the Executive Director [~~executive director~~]. Thereafter, all Pleadings in the Proceeding shall be addressed to the Executive Director.

(c) Copies of any documents or Pleadings [~~pleadings~~] filed with or served upon the Executive Director [~~executive director~~] or Examiner [~~examiner~~] shall be served upon all other Parties [~~parties of record~~] to the Proceeding [~~proceeding~~] or their Authorized Representative contemporaneously with such filing or service. [~~If any party is represented by an attorney or other representative authorized under this Chapter to make appearances, service shall be made upon that attorney or representative.~~]

(d) Unless otherwise stated, all documents and Pleadings [~~pleadings~~] required to be served on any Party [~~party~~] may be served by any of the following methods:

(1) hand-delivery;

(2) certified or registered mail to the Party's or the Party's Authorized Representative's [~~party's~~] last known address;

(3) facsimile to the Party's or the Party's Authorized Representative's [~~party's~~] current facsimile number; or

(4) any other manner as the Executive Director or Examiner [~~executive director or examiner~~], in their [~~his~~] discretion, may reasonably require.

(e) Service by mail shall be complete when the Pleading [~~pleading~~] or document is properly addressed, postage paid and deposited in a postal box. Service by facsimile is complete when the Pleading [~~pleading~~] or document is transmitted to the recipient's current facsimile number. Service by facsimile after 5:00 p.m. (recipient's time) shall be considered completed service on the following date. Notwithstanding the foregoing, whenever any portion of a Pleading [~~pleading~~] or document may be considered or ruled upon at a hearing, then the Party or Authorized Representative [~~party or representative~~] serving same shall, not less than three (3) business days prior to any hearing, take all reasonable steps to notify, by telephone or facsimile,

all other Parties [~~parties~~] to the Proceeding [~~proceeding~~] as to the nature of the Pleading [~~pleading~~] or document filed and the relief requested therein.

(f) The Party or Authorized Representative [~~party or authorized representative~~] filing or serving any documents or Pleadings [~~pleadings~~] shall, by his signature, certify to the Examiner [~~examiner~~] or the Executive Director [~~executive director~~] the Party's compliance with these rules regarding service. The failure of any Party or Authorized Representative [~~party or authorized representative~~] to comply with the rules regarding service of documents and Pleadings [~~pleadings~~] may be grounds for the entry of an Order [~~order~~] striking the Pleading [~~pleading~~] or document from the record or the imposition of other appropriate sanctions as specified in §67.108 of this chapter (relating to discovery sanctions).

(g) Documents and Pleadings [~~pleadings~~] are considered to be filed with the Executive Director or Examiner [~~executive director or examiner~~] when they are received by the Executive Director or Examiner [~~executive director or examiner~~] or when they are served properly [~~postmarked~~], whichever is earlier.

§67.9. Computation of Time.

(a) Counting days. In computing any period of time prescribed or allowed by this chapter [~~Chapter~~], by Order [~~order~~] of the Executive Director, Examiner, ERS, the Board or its designee [~~board~~], or by any applicable rules or statutes, the period shall begin on the day after the act, event, mailing, or default in question and it shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday (including federal and state holidays), in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any of the documents or Pleadings mentioned in §67.7 of this chapter [~~title~~] (relating to filing and service of documents [~~Filing and Service of Documents~~] and Pleadings) may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is agreement pursuant to §67.11 of this chapter (relating to agreements to be in writing) among all affected Parties, or there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the Party [~~party~~] making the motion.

(1) In the case of filings which initiate a Proceeding [~~proceeding~~], which are made before an Examiner [~~examiner~~] has been assigned the matter, or are made after all Proceedings [~~proceedings~~] pending before the Examiner [~~examiner~~] have concluded, the Executive Director [~~executive director~~] will determine whether or not good cause exists and whether or not an extension should be granted. The Executive Director's [~~executive director's~~] decision constitutes final Agency [~~agency~~] action on the issue and no administrative appeal from the Executive Director's [~~executive director's~~] decision is available.

(2) In the case of filings made in a Proceeding [~~proceeding~~] after an Examiner [~~examiner~~] has been assigned the matter, and prior to the time the Proceedings [~~proceedings~~] before the Examiner [~~examiner~~] have concluded and the Examiner no longer has jurisdiction, the Examiner [~~examiner~~] will determine whether or not good cause exists and whether or not an extension should be granted.

§67.11. Agreements To Be in Writing.

No stipulation or agreement between the Parties or their Authorized Representatives [~~parties, their attorneys, or representatives~~], with regard to any matter involved in any Proceeding [~~proceeding~~] governed by this chapter, shall be enforceable [~~enforced~~] unless it is [~~shall have been~~] reduced to writing and signed by the Parties or their Authorized Representatives [~~parties or the representatives authorized by this chapter to appear for them,~~] or unless it is [~~shall have been~~] dictated into the record by them during the course of a hearing or oral deposition, or incorporated into an Order [~~order~~] bearing their written approval as to form and substance. This section does not limit a Party's [~~party's~~] ability to waive, modify, or stipulate any right or privilege afforded by this chapter [~~these sections~~], unless precluded by law.

§67.13. Conduct and Decorum.

(a) Comportment. Every Party [~~party~~], witness, and Authorized Representative [~~attorney, or other representative~~] shall comport himself in all Proceedings [~~proceedings~~], depositions, conferences, meetings and hearings with dignity, courtesy, and respect for the Board, its designee, the Executive Director, Examiners, and all other Parties, their Authorized Representatives, and participants [~~board, the examiners, and all other parties and participants~~]. Authorized Representatives [~~Attorneys and authorized representatives~~] shall observe and practice the ethical behavior prescribed for attorneys by the "Texas Lawyers Creed" and the "Texas Disciplinary Rules of Professional Conduct" [~~"Code of Professional Responsibility" and "Canons of Judicial Ethics"~~]; provided, however, that any Authorized Representative [~~authorized representative~~] who is not licensed to practice law in the state of Texas shall [~~may~~] not, by these rules, engage in the unauthorized practice of law as set forth in Government Code [~~Tex. Gov't Code~~] Chapter 81, Subchapter G (Vernon 2005) [~~(Vernon 1998)~~].

(b) Compliance. Upon violation of subsection (a) of this section, any Party [~~party~~], witness, [~~attorney,~~] or Authorized Representative [~~other representative~~] may be excluded by the Board, its designee, [~~board~~] or the Examiner [~~examiner~~] from any hearing for such period and upon such conditions as are just, or may be subject to such other just, reasonable, and lawful disciplinary action as the Board, its designee, [~~board~~] or the Examiner [~~examiner~~] may prescribe. Any disciplinary action taken [~~recommended~~] by the Examiner [~~examiner~~] shall be subject to review by the Board or its designee [~~board~~]. The Examiner is not authorized by these rules to assess monetary sanctions, attorney's fees, or costs upon any Party or witness, and any provisions of the Texas Rules of Civil Procedure relating to the award of monetary sanctions, attorney's fees, or costs do not provide such authority to the Examiner.

§67.15. Classification of Parties.

Parties to Proceedings [~~proceedings~~] governed by this chapter [~~Chapter~~] are classified as ERS, appellants, respondents, Claimants, Insureds, Insurers, Administering Firms or Intervenors [~~claimants, insureds, insurers, administering firms or intervenors~~].

§67.17. Parties Defined.

The following words and terms when used in this chapter [~~Chapter~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administering Firm--Any firm designated by the Board [~~board~~] to administer any coverages, services, claims, benefits, or requirements in accordance with Chapter 1551, [~~Article 3.50-2, Texas~~] Insurance Code and by the rules of the Board. The Administering Firm [~~board, and the administering firm~~] shall be considered a Party [~~party~~] to any Proceeding [~~proceeding~~] in connection with such matters.

(2) Appellant or Claimant [~~claimant~~]--Any Person [~~person~~] with standing to pursue an administrative appeal under this chapter [~~Chapter~~] who, by written Pleading [~~petition~~], including a notice of appeal [~~appeals~~], applies for or seeks an available administrative remedy from the Board or its designee [~~board~~].

(3) Insurer--Any [~~The~~] insurance carrier who has contracted with ERS [~~the board~~] to provide coverages authorized by the

Texas Employees [~~Uniform~~] Group [~~Insurance~~] Benefits Act, Chapter 1551, [~~Article 3.50-2, Texas~~] Insurance Code. The Insurer [~~insurer~~] shall be considered a Party [~~party~~] to any Proceeding [~~proceeding~~] which involves a question of eligibility or coverage under its contract with ERS [~~the board~~].

(4) Intervenor--A Party [~~party~~] other than an Appellant [~~appellant~~] or Claimant [~~claimant~~] who is permitted to become a Party [~~party~~] to a Proceeding [~~proceeding~~] in accordance with §67.21 of this chapter [~~title~~] (relating to intervention [~~Intervention~~]).

§67.19. Alignment of Parties.

Parties may be aligned according to the nature of the Proceeding [~~proceeding~~] and their relationship to it and each other.

§67.21. Intervention.

(a) Any Person or Agency with standing and who is [~~person or agency~~] interested in intervening in any Proceeding [~~proceeding~~] before the Board or its designee [~~board~~] may appear formally in the Proceeding [~~before the board~~], by filing a motion to intervene with the Executive Director [~~executive director~~] at least thirty (30) [~~fifteen (15)~~] days in advance of the hearing or submission date.

(b) Any Person or Agency with standing and who is [~~person or agency~~] interested in intervening in any Proceeding [~~proceeding~~] pending before an Examiner [~~examiner~~] may file a motion to intervene with the Examiner [~~examiner~~] at least thirty (30) days in advance of the hearing date.

(c) All motions to intervene shall include any relevant, material, and proper testimony and evidence bearing upon the issues involved in the particular Proceeding [~~proceeding~~], reasons why such intervention is proper, and in what ways the movant has an economic, proprietary, or other substantial justiciable [~~personal~~] interest in the Proceeding [~~such intervention~~]. The motion must be supported by a showing of standing and good cause to intervene.

(d) The Executive Director [~~executive director~~] or Examiner [~~examiner~~], subject to timely [~~immediate~~] review by the Board or its designee [~~board~~], may determine whether or not intervention should be permitted.

§67.23. Representative Appearances.

(a) To the extent permitted by law, any Party [~~party~~] may appear and represent himself or, upon written notice duly filed with the Executive Director or Examiner [~~executive director or examiner,~~] may, at the Party's own expense, appear through any Person [~~person~~] authorized by that Party [~~party~~] to make appearance for him except as provided in §67.43(b)(1) of this chapter [~~title~~] (relating to dismissal without hearing [~~Dismissal without Hearing~~]).

(b) Each Party [~~party~~] to a Proceeding [~~proceeding~~] may be represented by an attorney-at-law at the Party's [~~party's~~] own expense.

(c) All Parties and their Authorized Representatives [~~party representatives~~] must conduct themselves in accordance with §67.13 of this chapter [~~title~~] (relating to conduct and decorum [~~Conduct and Decorum~~]), and are prohibited from knowingly making, facilitating, or participating in the making or presentation of any false statement, representation, or claim about any material fact in connection with the Proceeding [~~proceeding~~].

§67.25. Classification of Pleadings.

Pleadings filed with the Executive Director [~~executive director~~], or filed with the Examiner [~~examiner~~] as provided in §67.7(b) of this chapter [~~title~~] (relating to filing and service of documents [~~Filing and Service of Documents~~] and Pleadings), include [~~shall be~~] notices, applications, notices of appeals, claims, answers, exceptions, replies, motions, or briefs. Regardless of any error in the designation of a Pleading [~~pleading~~], it shall be accorded its true status in the Proceeding [~~proceeding~~] in which it is filed.

§67.27. Form and Content of Pleadings.

(a) Typewritten or printed. Pleadings [~~and briefs~~] shall be typewritten or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin at least one inch wide and attached [~~annexed~~] exhibits shall be folded to the same size. Unless printed, the impression shall be on one side of the paper only and shall be double spaced, except that footnotes and quotations in excess of a few lines may be single spaced. Reproductions may be by any process, provided all copies are true and correct, clear and permanently legible.

(b) Content. Pleadings shall state their object, shall contain a concise statement of the supporting facts, and shall be signed by the Party or his Authorized Representative [~~claimant, party, or his authorized representative~~].

(c) Signature and address. The original of every Pleading [~~pleading~~] shall be signed in ink by the Party [~~party~~] filing it or by his Authorized Representative [~~authorized representative~~]. Pleadings shall contain the address and phone number of the Party [~~party~~] filing the document or the name, business address, and telephone and facsimile numbers [~~number~~] of the Authorized Representative [~~representative~~].

(d) Form for Pleadings. All Pleadings [~~pleadings~~] shall contain the following:

(1) the name of the Party [~~party~~] supporting or opposing the [~~board~~] action of the Executive Director, Examiner, the Board or its designee;

(2) a concise statement of the facts relied upon by the pleader;

(3) a citation of the authority supporting the relief requested;

(4) [~~(3)~~] a prayer stating the type of relief, action, or Order [~~order~~] desired by the pleader;

(5) [~~(4)~~] any other matter required by statute or applicable rule; and [~~.~~]

(6) [~~(5)~~] a certificate of service or other notation showing that a copy of the Pleading [~~pleading~~] has been served on all other Parties [~~parties~~] to the Proceeding [~~proceeding~~] or their Authorized Representatives [~~representatives~~] in accordance with §67.7 of this chapter [~~title~~] (relating to filing and service of documents [~~Filing and Service of Documents~~] and Pleadings).

(e) Waiver. The Executive Director, Examiner, the Board or its designee, [~~executive director, or examiner~~] if applicable, may waive any requirement of this section if it is determined [~~he determines~~] that application of the requirement to a Party [~~member, party, or insured~~] would create an unnecessary hardship and that not requiring the Party [~~member, party, or insured~~] to comply with the section will not adversely affect the rights of any other Party [~~party~~].

§67.31. Written Motions.

Any motion relating to a pending Proceeding [~~proceeding~~], unless made during a hearing, shall be written and shall set forth the relief sought and the specific reasons and grounds for relief. If based upon matters which do not appear of record, it shall be supported by certified copies of documents relied upon, documents properly authenticated, or, in the case of testimony, sworn affidavits. With the exception of motions for continuance (see §67.47 of this chapter, (relating to postponements or continuances) [~~title (relating to Postponements or~~

~~Continuances)~~]), any motion filed in a Proceeding [~~proceeding~~] must be filed and served on the Examiner (or the Executive Director if the Examiner no longer has jurisdiction), and all Parties or their Authorized Representatives not less than three (3) business days before the date of the hearing unless a showing of good cause for not complying with this provision is made.

§67.33. Amended Pleadings.

Any Pleading may be amended without leave until thirty (30) days prior to the hearing. Any Pleading [~~pleading except notices of issues~~] may be amended at any time until three (3) business days prior to the hearing, provided that it does not act as a surprise to any other Party [~~the opposite party~~]. Any amendment to a Pleading [~~pleading~~] which operates as a surprise to any other Party [~~party~~], may be granted only upon written motion showing good cause and that no harm will result.

§67.35. Incorporation of Board or ERS Records by Reference.

Any Pleading [~~pleading~~] may adopt and incorporate, by specific reference, any part of any document or entry in the official files and records of the Board [~~board~~] or of ERS [~~the Employees Retirement System of Texas~~]. Such adoption by reference does not relieve Parties of their burden, under these rules, or other applicable law, to produce admissible evidence to support their claims. [~~This section shall not relieve any party of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law or applicable rule.~~]

§67.37. Docketing and Numbering of Causes.

When an appeal, application, or other Pleading [~~pleading~~] which is intended to institute a hearing before the Board or its designee [~~board~~] is received, and it complies with these rules as to form and content, it shall be referred to an Examiner [~~examiner~~] to conduct the hearing, shall be docketed as a pending Proceeding [~~proceeding~~], and notice shall be served.

§67.39. Notice and Service.

(a) In a Proceeding [~~contested case~~], the Executive Director [~~executive director or examiner~~] shall give Initial Notice [~~initial notice~~] of hearing and the issues to be determined therein ("Initial Notice") [~~(initial notice)~~]. The Initial Notice [~~initial notice~~] shall be given not less than twenty (20) days prior to hearing. In stating the issues and matters asserted in the Initial Notice [~~initial notice~~], the Executive Director [~~executive director or examiner~~] shall state verbatim the issues and matters set forth in the letter from the Executive Director [~~executive director~~] to the Examiner [~~examiner~~] referring the case for hearing.

(b) After service of the Initial Notice [~~initial notice~~], any Party or his Authorized Representative [~~party~~] wishing to raise issues or matters not set forth in the Initial Notice [~~initial notice~~] must do so by filing a motion setting forth such proposed issues or matters not less than thirty (30) [~~ten (10)~~] days before the date set for hearing. The motion must be based on facts and legal authorities supporting the inclusion of additional issues. Responses to the motion may be filed and served within fourteen (14) days from the date the motion is served. If granted, the Examiner [~~examiner~~] shall give notice, not less than seven (7) [~~five (5)~~] days before the date of hearing, of the additional issues and matters to be decided in the Proceeding [~~contested case~~].

§67.41. Contents of Initial Notice and Amendments.

(a) All Initial Notices [~~initial notices~~] shall include the following:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved;

(4) a short, plain statement of the issues; and [~~matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than ten (10) days before the date set for hearing, any party may request that another party file a more definite and detailed statement of facts and issues to be determined in the proceeding. Such statement must be filed not less than five (5) days prior to the date set for the hearing; and~~]

(5) any other statement required by law.

(b) If the Executive Director is unable to state the issues in reasonable detail at the time the Initial Notice is served, the Initial Notice may be limited to a general statement of the issues involved. The Executive Director may file, thereafter, an amended or supplemental notice of hearing providing a more detailed statement of facts and legal issues to be determined in the Proceeding. If the Agency or other Party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than ten (10) days before the date set for hearing, any Party may request that another Party file a more definite and detailed statement of facts and issues to be determined in the Proceeding. Such statement must be filed not less than five (5) days prior to the date set for the hearing.

(c) [~~(b)~~] All other notices in a Proceeding [~~contested case~~] shall set forth only the additional issues and matters to be decided.

§67.43. Dismissal without Hearing.

(a) Motions for dismissal without a hearing may be filed and ruled upon for any of the following reasons:

(1) failure to prosecute a claim;

(2) unnecessary duplication of Proceedings [~~proceedings~~] or res judicata;

(3) withdrawal or voluntary dismissal of appeal;

(4) moot questions or obsolete petitions;

(5) following a Member's request for [~~lack of jurisdiction or the member has requested~~] a refund of his retirement account, or other matters establishing a lack of jurisdiction; [~~or~~]

(6) upon agreement of the Parties pursuant to §67.11 of this chapter (relating to agreements to be in writing); or [~~parties.~~]

(7) failure to appear at any hearing for which notice has been served.

(b) The Examiner [~~examiner~~] shall, and the Board, its designee, or the Executive Director [~~board and executive director~~] may, dismiss the appeal of any Person [~~person~~] who has filed written notice of the appeal but who defaults [~~defaulted~~] by:

(1) failing to personally appear at any [~~the~~] hearing if the Appellant [~~appellant~~] is not represented by an Authorized Representative [~~attorney-at-law~~] unless such appearance is waived by agreement of all the Parties pursuant to §67.11 of this chapter [~~parties~~];

(2) failing to personally appear at any [~~the~~] hearing if the Appellant [~~appellant~~] is represented by an Authorized Representative [~~attorney-at-law~~] unless the Appellant [~~appellant~~] gives written notice at least ten (10) days prior to the date of the hearing that the Appellant [~~appellant~~] will not personally appear or unless such appearance is

waived by agreement of all Parties pursuant to §67.11 of this chapter [~~parties~~]; or

(3) failing to request a hearing or to take some other action specified by the Examiner or Executive Director [~~examiner~~] within thirty (30) days after notice is mailed of intention to dismiss the claim.

(c) The Board, its designee, or the Executive Director [~~board or executive director~~] may dismiss an appeal for any of the reasons described in subsection (a) of this section. A dismissal of an appeal by the Board, its designee, or the Executive Director [~~board or executive director~~] constitutes final Agency [~~agency~~] action on the appeal and no administrative appeal from the decision is available.

(d) All dismissals by an Examiner under this section are mandatory and shall be unconditional. Upon a timely motion to reinstate and a showing of [~~For~~] good cause, the Executive Director [~~executive director~~] may, in her sole discretion, thereafter permit reinstatement of an appeal. A motion to reinstate may not be filed later than thirty (30) days from the date the Order of dismissal is served. An Order denying a motion to reinstate constitutes final Agency action and no administrative appeal from the decision is available.

§67.45. Prehearing Conference.

(a) In any Proceeding [~~proceeding~~], upon prior written notice by the Executive Director, the Board or its designee or by the Examiner [~~executive director or board, or by the examiner~~] on his [~~its~~] own motion, or on the motion of any Party [~~a party~~], the Parties [~~parties,~~] or their Authorized Representatives, any Parties and their Authorized Representatives [~~attorneys or representatives~~] may be directed to appear before the Examiner [~~examiner~~] at a specified time and place for a conference prior to a [~~the~~] hearing for the purpose of formulating issues and considering any of the following:

(1) the simplification of issues;

(2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by any of the Parties [~~parties~~] of matters of public record, including, but not limited to such matters as Agency [~~annual~~] reports and other documents, in order to avoid the unnecessary introduction of proof;

(3) the procedure at a hearing;

(4) the limitation, where possible, of the number of witnesses;

(5) any other matters which may aid in the simplification or resolution of the Proceedings [~~proceedings~~], and the disposition of the matters in controversy[~~, including settlement of such issues as are in dispute~~].

(b) A motion or notice under this section shall describe the subject matter of the conference with reasonable specificity.

(c) [~~(b)~~] Action taken at the conference shall be recorded by the Examiner [~~examiner~~], unless the Parties [~~parties~~] enter into a written agreement as to such matters as permitted in §67.11 of this chapter [~~title~~] (relating to agreements to be in writing [~~Agreements To Be in Writing~~]).

(d) [~~(c)~~] A prehearing conference may be held by means of a telephone conference [~~telephone~~] call.

§67.47. Postponements or Continuances.

(a) The Examiner shall postpone or continue a hearing upon the agreement of the Parties pursuant to §67.11 of this chapter (relating to agreements to be in writing), and the Examiner [~~examiner~~] may postpone or continue a hearing for good cause upon the motion of any Party, Authorized Representative or Examiner [~~party or the examiner~~].

(b) A motion for postponement or continuance that is not subject to the agreement of the Parties shall be in writing, shall be served on all Parties [~~parties~~] and filed with the Examiner [~~examiner~~] no later than five (5) days prior to the date of the hearing, and shall set forth the specific grounds and good cause upon which the continuance is sought. A contested motion for continuance shall also comply with the requirements of Rules 251 - 253 of the Texas Rules of Civil Procedure. Any motion for postponement or continuance filed less than five (5) days prior to the date of hearing shall not be granted unless [~~If~~] good cause for the late filing is demonstrated in the motion and supported by affidavit(s) or other evidence. In such instance, the Examiner [~~examiner~~] may consider a motion filed after that time or presented orally at the hearing.

§67.49. Motion for Consolidation.

A motion for consolidation of two or more Proceedings [~~appeals, applications, petitions, or other proceedings~~] shall be in writing, signed by the movant or [~~,~~] his Authorized Representative [~~attorney or representative~~], and filed with the Executive Director or Examiner [~~executive director or examiner~~] at least ten (10) days prior to the date set for hearing. No two or more Proceedings [~~appeals, applications, petitions, or other proceedings~~] shall be consolidated or heard jointly without the consent of all Parties [~~parties~~] to all such Proceedings [~~proceedings~~], unless the Board, its designee, the Executive Director or Examiner [~~board, executive director, or examiner shall~~] find that the two or more Proceedings [~~appeals, applications, petitions, or other proceedings~~] involve some or all of the same Parties, common questions of law or fact, or both, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice. Separate [~~Special~~] hearings on distinct [~~separate~~] issues may also be allowed where such hearings are in the interest of justice, or upon the agreement of all Parties to the Proceeding pursuant to §67.11 of this chapter (relating to agreements to be in writing).

§67.51. Nature of Hearings.

All hearings conducted in any Proceeding [~~proceeding~~] shall be open to the public unless the Board, its designee, the Executive Director or Examiner [~~board, executive director, or examiner~~] determines that all or a portion of the hearing will relate to matters deemed confidential by law, in which event the hearing may [~~will~~] be closed to the public.

§67.53. Presiding Officer.

(a) Evidentiary hearings [~~Hearings~~] will be conducted by Examiners appointed by the Executive Director pursuant to Government Code, §815.511(b) [~~examiners~~]. The Examiner [~~examiner~~] shall have authority to administer oaths, to examine witnesses pursuant to this chapter, and to rule upon, subject to review by the Board or its designee, the admissibility of evidence and amendments to Pleadings [~~pleadings~~]. The Examiner [~~He~~] shall have the authority to recess any hearing from day to day. If the Examiner [~~examiner~~] is unable to continue presiding over a Proceeding [~~case~~] at any time before the Examiner loses jurisdiction [~~final decision~~], another Examiner [~~examiner~~] will be appointed who shall perform any function remaining to be performed without the necessity of repeating any previous Proceedings [~~proceedings~~].

(b) The Examiner's conduct in Proceedings governed by this chapter shall comport with and be subject to the provisions of the Texas Code of Judicial Conduct to the extent consistent with the powers granted to the Examiner by law. To this end, Examiners shall conduct all Proceedings in a fair and impartial manner, and they shall refrain from providing legal advice or guidance to any Party or Authorized Representative other than on minor procedural matters.

§67.55. Order of Procedure.

(a) The Examiner [~~examiner~~] shall open the hearing and make a concise statement of its scope and purposes. Once the hearing has

begun, the Parties or their Authorized Representatives [~~parties or their representatives~~] may be off the record only when the Examiner [~~examiner~~] permits. If a discussion off the record is pertinent, the Examiner [~~examiner~~] may summarize such discussion for the record. Appearances are to be entered on the record by all Parties [~~parties~~], their Authorized Representatives [~~attorneys, or representatives~~], and any Persons [~~persons~~] who may testify during the Proceedings [~~proceedings~~]. All Persons [~~persons~~] present who may testify will then be placed under oath. Thereafter, Parties [~~parties~~] may make motions or opening statements. [~~The party seeking relief is the party with the burden of proof throughout the proceedings.~~]

(b) Burden of Proof. The Party seeking relief is the Party with the burden of proof on all issues throughout the Proceedings, including issues in the nature of an affirmative defense.

(c) [~~(b)~~] Following opening statements, if any, by both sides, the Party [~~party~~] with the burden of proof [~~(the appellant, insured, petitioner, intervenor, or claimant)~~] may be directed to proceed with his direct case. Questions from the Examiner shall be limited to matters of [~~by way of~~] clarification only, and such questions shall [~~may be permitted but should~~] not be used to assist Parties with the burden of proof in meeting their burden or as a substitute for cross-examination.

(d) Invocation of "The Rule." Upon the motion of any Party to the Proceeding, nonparty witnesses shall be excluded during the testimony phase of the Proceeding as provided in Tex. R. Civ. P. 267(a) - (d). A witness or Party's failure to comply with the Examiner's Order granting such motion may be subject to an appropriate sanction as provided in §67.13 of this chapter (relating to conduct and decorum).

(e) [~~(c)~~] Where the Proceeding [~~proceeding~~] is initiated at the Executive Director's [~~executive director's~~] or the Board's or its designee's [~~board's~~] own call, or where several Proceedings [~~proceedings~~] are heard on a consolidated record, the Examiner [~~examiner~~] shall designate who shall open and close and at what stage intervenors shall be permitted to offer evidence.

(f) [~~(d)~~] Opportunity for cross-examination and presentation of direct and rebuttal evidence [~~cases~~] shall be afforded all Parties [~~parties of record~~]. After all Parties [~~parties~~] have completed the presentation of their evidence, and been afforded the opportunity to ask clarifying questions and to cross-examine adverse [~~the opposition~~] witnesses, closing arguments [~~statements~~] may be allowed. The Party [~~party~~] with the burden of proof [~~(the appellant, insured, petitioner, intervenor, or claimant)~~] shall be entitled to open and close.

(g) [~~(e)~~] On a proper motion and showing of good cause that evidence was not reasonably known or knowable to the movant, or was not provided in response to a proper discovery request, the Examiner [~~The examiner~~] may also call upon any Party to provide [~~party or staff of the board for~~] further relevant and material [~~or relevant~~] evidence upon any issue in the Proceeding before the issuance of a proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection, cross-examination, and rebuttal by the other Parties [~~interested parties~~].

§67.57. Reporters and Transcripts.

(a) An official record shall be made in all Proceedings [~~proceedings, either by stenographic means or~~] by electronic sound or video recording. In Proceedings [~~proceedings~~] where arrangements are made for stenographic recording, an official reporter shall make and, when requested by any Party or Agency [~~party~~] in writing, transcribe a stenographic record of the hearing. The reporter shall provide as many copies of the transcript as may be requested. Unless, otherwise provided by an agreement pursuant to §67.11 of this chapter (relating to agreements to be in writing), the Person or Agency [~~The person or agency~~] requesting such transcription shall be responsible for all costs associated with the transcription.

(b) To the extent that any motion by any Party [~~party~~] or any Order [~~order~~] arising from any motion results in additional costs associated with official reporting of the hearing, the Person or Agency [~~person or agency~~] making the motion shall be responsible for the payment of those additional costs. Such costs [~~may~~] include, but are not limited to transcription and appearance fees incurred as the result of continuance, cancellation, or postponement of the hearing. Payment of any outstanding additional costs associated with official reporting of the hearing is a prerequisite to the making of a stenographic record of the hearing.

(c) Errors claimed to be in a transcription of a contested hearing shall be noted in writing, and suggested corrections may be offered within ten (10) days after the transcript is filed with the Examiner [~~examiner~~], unless the Examiner [~~examiner~~] shall permit suggested corrections to be offered thereafter. Suggested corrections shall be stated in a separate addendum to the transcript and shall be served in writing upon each Party [~~party of record~~] and the Examiner [~~examiner~~]. If not objected to within twelve (12) days after being offered, the Examiner [~~examiner~~] will direct that such suggested corrections be made and the manner of making them. In the event that Parties [~~parties~~] disagree on suggested corrections, the Examiner [~~examiner~~], with the aid of evidence and argument [~~argument and testimony~~] from the Parties [~~parties~~], shall then determine the manner in which the record shall be changed, if at all.

§67.61. Offer of Proof.

(a) Formal exceptions to rulings of the Examiner [~~examiner~~] during a hearing shall be unnecessary, but if made, they should be in accord with §67.69 of this chapter [~~title~~] (relating to rules of evidence [~~Rules of Evidence~~]). It shall be sufficient that the Party [~~party~~], at the time any ruling is made or sought, makes known to the Examiner [~~examiner~~] the action which he desires.

(b) When testimony is excluded by ruling of the Examiner [~~examiner~~], the Party [~~party~~] offering the evidence shall be permitted to make an offer of proof by dictating into the hearing tape recording or other media or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and that offer of proof shall be sufficient to preserve the point for review by the Board or its designee [~~board~~]. Examiners may ask such clarifying questions of the witness as allowed in §67.55(b) of this chapter (relating to order of procedure) as necessary to establish [~~The examiner may ask such questions of the witness which he deems necessary to satisfy himself~~] that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§67.63. Briefs.

(a) Briefs shall conform, where practicable, to the requirements for form of Pleadings [~~pleadings~~] set out in this chapter [~~Chapter~~]. The issues [~~points~~] involved shall be concisely stated, the evidence in support of each issue [~~point~~] shall be summarized, and the argument and authorities shall be organized and directed to each issue [~~point~~] in a concise and logical manner.

(b) Briefs may be requested by the Examiner [~~examiner both~~] prior to [~~and after the~~] filing of the Examiner's [~~examiner's~~] proposal for decision set out in §67.81 of this chapter [~~title~~] (relating to Examiner's report and proposal for decision [~~Report and Proposal for Decision~~]).

§67.65. The Record.

(a) Contents of record. The record in a Proceeding [~~contested case~~] shall consist of all matters identified in APA §2001.060, including [~~include~~] the following:

(1) all Pleadings [~~pleadings, motions~~], intermediate rulings, and documents reflecting Board [~~board~~] policy;

(2) evidence admitted [~~received or considered~~];

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on objections;

(5) proposed findings, exceptions, replies to exceptions, and supporting briefs;

(6) any proposal for decision, opinion, or report by the Examiner [~~examiner~~] presiding at the hearing;

(7) all staff memoranda or data submitted to the Examiner [~~examiner~~] in connection with his consideration of the case.

(b) Closing the record.

(1) Upon the conclusion of the hearing, the Examiner [~~examiner~~] shall close the record subject to receipt of any information requested by the Examiner [~~examiner~~] pursuant to §67.55(e) of this chapter [~~Chapter~~] (relating to order of procedure [~~Order of Procedure~~]) and receipt of any late exhibits as described in §67.77 of this chapter [~~Chapter~~] (relating to introduction of exhibits [~~Introduction of Exhibits~~]).

(2) Evidence of any kind other than that described in subsection (a) of this section, not made a part of the record prior to closing, shall be accepted by the Examiner or the Executive Director [~~examiner~~] and considered by the Examiner or the Executive Director [~~examiner~~] for inclusion in the record only upon a showing of relevance, materiality and good cause as to why the evidence could not reasonably have been presented at the hearing. Such additional evidence shall not be admitted without providing the Parties not offering the evidence the opportunity to conduct cross-examination and to offer rebuttal evidence. The proposal for decision shall not be presented to the Board or its designee [~~trustees~~] until the Examiner or the Executive Director [~~examiner~~] has made a ruling on such evidence.

(c) Findings of fact. Findings of fact shall be based exclusively on the evidence and on matters officially noted.

§67.69. Rules of Evidence.

(a) The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under them may be admitted (except where precluded by statute or this chapter) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. [~~The rules of privilege recognized by law shall be effective in board proceedings. Objections to evidentiary offers may be made and shall be noted in the records. No evidence will be admissible in a proceeding if it is beyond the scope of the notices of issues and matters asserted in the contested case.~~]

(b) Opinion evidence of a medical condition or cause must be based on reasonable medical probability and supported by objective medical evidence. Subjective complaints of pain or other symptoms that are uncorroborated by objective medical evidence may not support a finding of fact relating to an allegation concerning a medical condition, disability, cause of incapacity for the further performance of duty or other medical issues.

(c) The rules of privilege recognized by law shall be effective in Proceedings. Objections to evidentiary offers may be made and shall be noted in the administrative record. No evidence will be admissible in a Proceeding if it is beyond the scope of the issues in the Proceeding.

§67.71. Official Notice.

Official notice may be taken of judicially cognizable facts, and such notice may be taken of generally recognized facts within the area of the specialized knowledge of ERS [~~the Employees Retirement System of Texas~~]. Parties shall be notified of the material noticed, including any Board decisions, staff memoranda or data,[~~;~~] and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge, or both, of ERS [~~the Employees Retirement System of Texas~~] and its staff may be utilized in evaluating the evidence.

§67.73. Documentary Evidence.

(a) Documentary evidence may be received in the form of copies or excerpts, upon a showing that the original is not readily available. On request, however, Parties [~~parties~~] shall be given an opportunity to compare the copy with the original.

(b) When a large number of similar documents are offered, the Examiner [~~examiner~~] may limit those admitted to a number which are typical and representative, and may, in his discretion, require a summarization of the relevant data from the documents and the presentation of the summary in the form of an exhibit; however, before making this requirement, the Examiner [~~examiner~~] shall see that all Parties [~~parties~~] of record or their Authorized Representatives [~~representatives~~] are given a reasonable [~~an~~] opportunity to examine the documents from which the summaries are made.

(c) Documents containing confidential medical or psychiatric records or health information may, upon proper and timely motion, be placed under seal and access limited to the Parties, the Examiner, the Executive Director, her staff and the Board or its designee in accordance with applicable law. In Proceedings involving allegations of misrepresentation, improper failure to disclose or other misconduct by the Appellant, the interests of the plans and programs administered by the Board shall be considered in ruling on a motion to seal records, and the Examiner's Order on the motion shall be subject to review by the Board or its designee. Nothing in this section shall be construed as limiting ERS' discretion to share evidence of criminal misconduct with any appropriate law enforcement authority or to otherwise disclose or use the confidential information as authorized by law. The requirements of Texas Rule of Civil Procedure 76a shall not be applicable in ERS Proceedings.

§67.74. Telephonic Proceedings.

(a) Upon timely motion containing the pertinent telephone number(s), a Party may request to appear before the Examiner by telephone or videoconferencing or to present the testimony of a witness by such methods. The Party requesting to appear or present testimony by telephone or videoconferencing has the burden to show that good cause exists for the granting of the request. Unless all Parties agree to the request, the requesting Party must demonstrate:

(1) how witnesses will be separated;

(2) that coaching of witnesses shall not occur and how coaching of witnesses will be prevented;

(3) why observing a witness' demeanor is not essential to the case; and

(4) how the witness' identity will be verified at the time of hearing.

(b) If the request is granted, a Party may appear or a witness may testify by telephone or videoconferencing before the Examiner if

each participant in the hearing has an opportunity to participate in and hear the Proceeding.

(c) The Examiner may conduct a prehearing conference by telephone or videoconferencing upon reasonable and adequate notice to the Parties, even in the absence of a Party motion.

(d) All substantive and procedural rights apply to telephone and videoconferencing prehearings and hearings, subject only to the limitations of the physical arrangement.

(e) Documentary evidence to be offered at a telephone or videoconferencing prehearing conference or hearing shall be served on all Parties and filed at least fourteen (14) days before the prehearing conference or hearing unless the Examiner, by written Order, amends the filing deadline.

(f) For a telephone or videoconferencing hearing or prehearing conference, the following may be considered a failure to appear and grounds for dismissal if the conditions exist for more than 15 minutes after the scheduled time for hearing or prehearing conference:

(1) failure to answer the telephone or videoconference line;

(2) failure to free the line for the Proceeding; or

(3) failure to be ready to proceed with the hearing or prehearing conference as scheduled.

§67.75. Admissibility of Prepared Testimony and Exhibits.

When a Proceeding [~~proceeding~~] will be expedited and the interests of the Parties [~~parties~~] will not be prejudiced substantially, testimony [~~evidence~~] may be received in written form. The prepared testimony of a witness upon direct examination, either in a narrative or question and answer form, may be, if admissible, admitted as evidence and incorporated in the record as if read or received as an exhibit, upon the witness' being sworn and identifying the same as a true and accurate record of what his testimony would be if he were to testify orally. The witness shall be subject to cross-examination and his prepared testimony shall be subject to being stricken either in whole or in part.

§67.77. Introduction of Exhibits.

(a) Form of exhibits. Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of the Examiner, Board or its designee, [~~board~~] and whenever practicable, shall conform to the requirements of §67.27 of this chapter [~~title~~] (relating to form and content of [~~Form and Content of~~] Pleadings. Exhibits shall be limited to facts that are material and relevant to the issues involved in a particular Proceeding [~~proceeding~~].

(b) Tender and service. The original of each exhibit offered shall be tendered to the Examiner [~~examiner~~] for identification. One copy shall be furnished to the Party [~~examiner, and one copy to each party of record~~] or his Authorized Representative [~~representative~~]. Written or printed documents received in evidence may not be withdrawn except with the approval of the Examiner [~~examiner~~].

(c) Excluded exhibits. In the event an exhibit has been identified, [~~objected to,~~] and not admitted into evidence [~~excluded~~], the Examiner [~~examiner~~] shall determine whether or not the Party [~~party~~] offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the Examiner [~~examiner~~] with his ruling, and shall be included in the record for the purpose only of preserving an [~~the~~] exception made to the Examiner's ruling that the exhibit is not admissible.

(d) Late exhibits. Unless specifically directed by the Examiner and upon a showing of good cause [~~examiner~~], no exhibit shall be filed in any Proceeding [~~proceeding~~] after the conclusion of the hearing, and then only after a copy of the exhibit has been served on all Parties [~~parties~~], and all Parties [~~parties~~] have been afforded an opportunity to conduct further discovery or cross-examination [~~cross examination~~] regarding such late exhibit.

§67.79. Witnesses.

(a) Oral testimony shall be presented under oath administered by the Examiner [~~examiner~~] or court reporter.

(b) The Examiner [~~examiner~~] shall have the right in any Proceeding [~~proceeding~~] to limit the number of witnesses whose testimony is merely cumulative.

§67.81. Examiner's [~~Report and~~] Proposal for Decision.

(a) If, in a Proceeding [~~contested case~~], a majority of the Board or its designee [~~trustees~~] has not heard the case or read the record, the decision by the Board or its designee, if adverse to a Party [~~party~~] to the Proceeding [~~proceedings~~] other than ERS [~~the board itself~~], may not be made until a proposal for decision is served on the Parties [~~parties~~], and an opportunity is afforded each Party [~~party~~] adversely affected to file exceptions and supporting briefs with the Examiner [~~examiner~~]. The proposal for decision must contain a statement of the reasons for the recommended [~~proposed~~] decision and of each proposed finding of fact and conclusion of law necessary to support the recommended [~~proposed~~] decision, prepared by the Person [~~person~~] who conducted the hearing or by one who has read the record, including Pleadings, exhibits and testimony admitted or offered into evidence. In addition, the proposal for decision shall contain a statement of the nature of the case, a discussion of the issues, the evidence, and the applicable law. A proposal for decision, and any proposed findings of fact or conclusions of law cited therein, not expressly adopted by the Board or its designee as its own shall not be considered to be a statement of the policy of the Board or ERS and shall not be cited as such or relied upon as controlling authority or as a precedent in a proposal for decision in a subsequent Proceeding.

[~~(b) The proposal for decision shall be accompanied by an examiner's report. This report shall contain a statement of the nature of the case, a discussion of the issues, the evidence, and the applicable law. A proposal for decision, and any findings of fact or conclusions of law cited therein, not expressly adopted by the Board or its designee as its own shall not be considered to be a statement of the policy of the trustees or of the Employees Retirement System of Texas and shall not be cited as such or relied upon as controlling authority or as a precedent in a proposal for decision in a subsequent contested case.~~]

(b) [~~(c)~~] Upon completion of the hearing and the proposal for decision, the Examiner [~~examiner~~] shall forward the [~~his report and~~] proposal for decision and the record to the Executive Director, and the Examiner no longer has jurisdiction in the Proceeding [~~executive director~~]. Ordinarily, a [~~report and the~~] proposal for decision shall be submitted not later than the 60th day after the conclusion of the hearing. [~~Upon review of the record, the executive director may reverse the decision being appealed. When appropriate, the examiner's report and proposal for decision, with all briefs and exceptions, will be submitted to the board for determination and order.~~]

(c) [~~(d)~~] The Examiner [~~examiner~~] shall serve a copy of the [~~his report and~~] proposal for decision on every Party [~~party of record~~].

§67.83. Filing of Exceptions and Replies.

(a) Any Party [~~party of record~~] may, no later than thirty (30) days after the date of service of the [~~examiner's report and~~] proposal for decision, file exceptions to the [~~report and~~] proposal for decision. Replies to the [~~these~~] exceptions shall be filed no later than forty-five (45) days after the date of service of the [~~examiner's report and~~] proposal for decision. The Examiner [~~examiner~~], at his discretion, may

grant a reasonable extension of the time for filing of exceptions and replies. A request for extension of time [~~within which~~] to file exceptions or replies shall be filed with the Examiner prior to the deadline for filing same [~~examiner~~], and a copy of the request shall be served on all Parties [~~parties of record~~] by the Party [~~party~~] making the request. Additional time shall be allowed only when the interests of justice so require.The Examiner shall have thirty (30) days from the last timely filing of exceptions or replies to modify the proposal for decision or otherwise respond.

(b) Upon the expiration of the earlier of the time to file exceptions (if no exceptions are filed) or the time for the Examiner to respond to any timely filed exceptions or replies, the Examiner shall forward the record to the Executive Director and the [~~time for filing exceptions or replies to exceptions, or after the replies and exceptions have actually been filed (if filed before the period for filing has expired), the examiner's report and~~] proposal for decision may be considered and ruled upon by the Executive Director, the Board or its designee as provided in this chapter [~~board~~]. The Examiner's jurisdiction in the Proceeding terminates at the time for forwarding the record.

(c) Upon review of the record, the Executive Director may reverse ERS' decision underlying the Proceeding. Otherwise, the Proceeding will be submitted to the Board or its designee for a final administrative decision unless it is resolved informally as allowed by law.

§67.85. Form of Exceptions and Replies.

Exceptions and replies to exceptions shall conform as nearly as practicable to the rules provided for Pleadings [~~pleadings~~]. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and that evidence and any arguments relied upon shall be grouped generally under the exceptions to which they relate.

§67.87. Submission of Appeals to the Board's Designee [~~Oral Argument before the Board~~].

(a) Except as otherwise provided in this chapter, Proceedings shall be considered by the Board's designee for a final decision, and shall be decided on submission of the record. Upon written motion and a showing of good cause, a Party or his Authorized Representative may make a written request for oral argument before the Board's designee. The request must be filed with the Executive Director no later than the thirtieth (30th) day after the deadline to file exceptions or the Examiner's deadline to respond to exceptions and replies, whichever is later. The designee's decision regarding a request for hearing constitutes final Agency action and no further administrative appeal from the decision is available. If the request is granted, the oral argument shall be conducted in accordance with §67.89 of this chapter (relating to presentation of contested cases to the Board or its designee). In a Proceeding referred to the Board pursuant to §67.5(d) of this chapter (relating to appeals), a request for oral argument shall be directed to the Executive Director. [~~Any party may present oral argument to the board before the final determination of any contested case by filing with the board a written request to do so at least three (3) working days prior to the day on which the board is to consider the contested case. If such a request is not timely filed, oral argument shall be allowed only at the discretion of the board. In the event that oral argument is allowed and all parties are present and prepared to present oral argument, the case will proceed. Otherwise, the board may, in its discretion, hear the case in the absence of any party or continue the case to a future board meeting.~~]

(b) The Parties may submit written arguments to the Board's designee within thirty (30) days after service of the Examiner's final proposal for decision responding to any exceptions and replies to exceptions filed by the Parties. Responses to such written arguments shall be filed within thirty (30) days after service of the written argument. All written arguments and responses shall be filed with the Executive Director.

(c) Proceedings to be decided upon submission shall be submitted to the Board's designee after sixty (60) days from ERS' receipt of the record from the Examiner and all written arguments and responses, if any.

§67.89. Presentation of Contested Cases to the Board or its Designee.

(a) When a request for oral argument is granted pursuant to §67.87 of this chapter (relating to submission of appeals to the Board's designee, the Examiner [~~The examiner~~] who prepared the [~~report and~~] proposal for decision shall, if practicable, present the Proceeding [~~contested case~~] to the Board or its designee [~~board~~] during the Board [~~board~~] meeting, or the designee's Proceeding, at which the case has been placed for final administrative decision [~~on the board's agenda~~]. In presenting the case, the Examiner [~~examiner~~] shall:

(1) concisely state the nature of the case;

(2) concisely state the positions of the Parties [~~parties~~];

(3) concisely state his or her proposal for deciding the case and the basis for that proposal; and

(4) respond to questions concerning the hearing and the proposal directed to him [~~or her~~] from a Trustee or the Board's designee [~~trustee~~]. The Examiner shall not present information that is not part of the record of the Proceeding.

(b) In a Proceeding that the Executive Director, in her sole discretion, determines should be set for consideration before the Board, a Party may present oral argument to the Board before the final determination of any Proceeding by filing with the Executive Director a written request to do so at least three (3) business days prior to the day on which the Board is to consider the Proceeding. If such a request is not timely filed, oral argument shall be allowed only at the discretion of the Board. In the event that oral argument is allowed and all Parties are present and prepared to present oral argument, the case will proceed. Otherwise, the Board may, in its sole discretion, hear the case in the absence of any Party, any Authorized Representative or the Examiner, or continue the case to a future meeting. In Proceedings affected by the Federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104 - 191) ("HIPAA") and rules promulgated pursuant to HIPAA, the Appellant must also file an authorization to allow disclosure of protected health information in any Proceeding before the Examiner, the Board or its designee.

(c) [~~(b)~~] A Trustee or the Board's designee [~~trustee~~] may question the Examiner [~~examiner~~] concerning the hearing, the evidence, [~~the report,~~] the proposal for decision or any other matter concerning [~~within~~] the record of the Proceeding [~~contested case~~]. In responding to a question, the Examiner [~~examiner~~] must advise the chairman of the Board or the Board's designee [~~board~~] if the Examiner [~~examiner~~] believes the question involves a matter outside the record of the Proceeding [~~contested case~~] or is otherwise improper. The chairman of the Board or the Board's designee [~~board~~] may ask the general counsel for her [~~his~~] opinion concerning the propriety of a particular question. The decision of the chairman of the Board or the Board's designee [~~board~~] concerning the propriety of a question shall be final.

(d) [~~(c)~~] A Trustee or the Board's designee [~~trustee~~] may ask the general counsel for her [~~his~~] opinion concerning the legality of a particular course of action or decision, the law or rules governing a particular aspect of matters within the jurisdiction of the Board or its designee [~~board~~], the evaluation of the evidence, or any other legal matter. The general counsel shall advise the chairman of the Board or the Board's designee [~~board~~] if the general counsel is of the opinion

that responding to a particular question would be inappropriate. The decision of the chairman of the Board or the Board's designee [~~board~~] concerning the propriety of a question shall be final.

(e) [~~(d)~~] If oral argument is allowed, then each Party [~~party~~] will be given time, not to exceed ten (10) minutes, unless additional time is allowed by the chairman of the Board or the Board's designee [~~five minutes~~], to present oral argument to the Board or its designee [~~board~~]. [~~The board may, in its sole discretion, allow additional oral argument not to exceed a total of 10 minutes for each party.~~] Questions by the Board or its designee [~~board~~] and answers to such questions will not be considered as part of the time limitations described in this section. Oral argument concerning matters outside the record and proffered documents not presented during the evidentiary hearing before the Examiner will not be allowed.

(f) [~~(e)~~] After the Examiner [~~examiner~~] presents his [~~report and~~] proposal for decision, the Trustees or the Board's designee [~~trustees~~] have been given an opportunity to ask questions, oral argument is presented, and the Trustees or the Board's designee [~~trustees~~] have been given an opportunity to discuss and consider the case, the Board or its designee [~~board~~] shall act on the case and render a decision.

§67.91. Form, Content, and Service of Orders.

(a) All final Orders [~~orders~~] of the Board or its designee [~~board~~] shall be in writing and shall be signed by the chairman of the Board or by the Board's designee [~~board~~]. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) Acting in its capacity as fiduciary of the employee benefit plans for which it serves as trustee, the Board or its designee [~~board~~] may, in their sole [~~its~~] discretion, modify, refuse to accept, or delete any proposed finding of fact or conclusion of law, or make alternative findings of fact or conclusions of law, if it is determined by the Board or its designee [~~determines~~] that all or part of the proposal for decision submitted by the Examiner [~~examiner~~], or a proposed finding of fact or conclusion of law contained therein, is:

(1) clearly erroneous or illogical;

(2) [~~is~~] against the weight of the evidence;

(3) [~~is~~] based on a misapplication of the rules of evidence or an insufficient review of the evidence;

(4) based on a medical opinion that is not supported by objective medical evidence, or is not based on reasonable medical probability;

(5) [~~(4)~~] [~~is~~] inconsistent with the terms or intent, as determined by the Board or its designee [~~board~~], of an applicable statute, benefit plan or insurance policy provision; [~~provisions; or~~]

(6) confusing, incomplete or misleading;

(7) immaterial or irrelevant to the issues; or

(8) [~~(5)~~] [~~is~~] not sufficient to protect [~~the public interest,~~] the interests of the plans and programs for which the Board [~~board~~] is trustee, or the interests, as a group, of the Members, retirees or participants covered by such plans and programs. The Order [~~order~~] shall contain or reference a written statement of the reason and legal basis for each change made based on the foregoing policy reasons. Correction of nonsubstantive typographical errors do not need to be explained.

(c) A copy of the Board's or its designee's [~~board's~~] decision or Order [~~order~~] shall be served on each Party [~~any party~~] or his Authorized Representative [~~authorized representative~~].

§67.93. Administrative Finality.

(a) Administrative action becomes final in any of the following events:

(1) adoption by the Board or its designee of a final Order and the failure to file a motion for rehearing within the time prescribed by §67.97 of this chapter (relating to rehearing).

(2) [~~(1)~~] adoption by the Board or its designee [~~board~~] of a final Order [~~order~~] and the denial of a motion for rehearing, either expressly or by operation of law; or [~~.~~]

(3) [~~(2)~~] adoption by the Board or its designee [~~board~~] of a final Order [~~order~~] which includes a statement that no motion for rehearing will be necessary because an imminent peril to the public health, safety, and welfare, including such peril to a plan or program administered by the Board, requires immediate effect to be given to a final decision or Order [~~order~~].

(b) Any other decisions designated by these rules to constitute final Agency action are subject to §67.97 of this chapter regarding motions for rehearing.

§67.95. Effective Date of Order.

The effective date of a final decision or Order [~~order~~], unless otherwise stated, is the date of the Board's or its designee's [~~board~~] action and it shall be incorporated in the body of the Order [~~instrument~~].

§67.97. Rehearing.

Motions for rehearing must be filed with the Executive Director [~~executive director~~] no later than twenty (20) days after the date the Party [~~party~~] or his Authorized Representative [~~attorney of record~~] is served with a copy of a [~~the board's~~] final decision or Order [~~order~~]. A reply to a motion [~~Replies to motions~~] for rehearing must be filed with the Executive Director [~~executive director~~] no later than thirty (30) days after the date of service of the [~~board's~~] final decision or Order [~~order~~]. Action [~~Board action~~] on the motion shall be taken no later than forty-five (45) days after the date the Party [~~party~~] or his Authorized Representative [~~attorney of record~~] is served with the [~~board's~~] final decision or Order [~~order~~]. If [~~board~~] action is not taken within this 45-day period, the motion for rehearing shall be overruled by operation of law. The [~~board may by written order extend the~~] period of time for filing these motions and replies and for taking [~~board~~] action thereon may be extended by written Order, except that this extension shall not extend the period for the Board's or its designee's [~~board~~] action on the motion beyond ninety (90) days after the date the Party [~~party~~] or his Authorized Representative [~~attorney of record~~] is served with a copy of the final decision or Order [~~order~~]. In the event of an extension, the motion for rehearing shall be overruled by operation of law upon the date fixed by the Order [~~order~~], or in the absence of a deadline provided in the Order [~~an order~~], 90 days after the date the Party [~~party~~] or his Authorized Representative [~~attorney of record~~] is served with a copy of the final decision or Order [~~order~~].

§67.99. Emergency Order.

If the Board or its designee [~~board~~] finds that an imminent peril to the public health, safety, or welfare, including such peril to a plan or program administered by the Board, requires immediate effect of a final decision or Order [~~order~~] in a Proceeding [~~contested case~~], the Board or its designee [~~it~~] shall recite that finding in the decision or Order, [~~order;~~] and the decision or Order [~~order~~] shall be final and appealable from the date rendered and no motion for rehearing shall be required as a prerequisite for appeal.

§67.101. Ex Parte Communications.

(a) Unless required for the disposition of ex parte matters authorized by law, the Executive Director, Examiners, Trustees or the Board's designee [~~members or employees of an agency~~] assigned to render a proposal for decision or Order, or to make proposed or adopted findings of fact and conclusions of law in a Proceeding [~~contested case~~] may not communicate, directly or indirectly, in connection with any issue of fact or law with any Party [~~party~~] or his Authorized Representative [~~representative~~], except on notice and opportunity for all Parties [~~parties~~] to participate.

(b) Any contact with any Trustees, the Board, or its designee [~~the board or any members thereof~~] by a Party, an Authorized Representative [~~party~~] or someone acting for a Party [~~representing a party~~] during the appeal process, other than that described in §67.89 [~~§67.87~~] of this chapter [~~title~~] (relating to presentation of contested cases to the Board or its designee [~~Oral Argument before the Board~~]), is improper.

(c) This rule does not apply to communications between the Executive Director, Board or its designee and their staff, including, but not limited to the ERS general counsel and staff experts as permitted by Government Code §2001.061(c).

§67.103. Subpoenas.

(a) The issuance of subpoenas in any Proceeding [~~proceeding~~] shall be governed by the subpoena provisions of the APA (Government Code §2001.089) [~~Administrative Procedure Act (Tex. Gov't Code §2001.001 et seq.)~~]. Following written request by a Party [~~party~~] or on its own motion, the Executive Director or her designee [~~board, executive director or examiner~~] may issue subpoenas addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a Proceeding [~~proceeding~~]. The subpoena may be issued only by [~~the board itself,~~] the Executive Director or her designee [~~executive director, or, during the pendency of a hearing, the examiner~~].

(b) Motions for subpoenas to compel the attendance or production of witnesses, the production of books, records, papers, or other objects shall be addressed to [~~the board,~~] the Executive Director and [~~executive director, or examiner,~~] shall be verified[~~,~~] and supported by a showing of good cause, and shall specify with reasonable particularity [~~as clearly as possible~~] the Persons, books, records, papers, or other objects desired and the material and relevant facts to be proven by them.

(c) Subpoenas shall be issued by the Executive Director [~~board, executive director, or examiner~~] only after:

(1) the movant has shown good cause that the subpoena should be issued or all of the Parties have agreed pursuant to §67.11 of this chapter (relating to agreements to be in writing) that a subpoena should be issued; and

(2) the movant has deposited sums sufficient to ensure payment of all expenses incident to the subpoenas. Service of subpoenas and payment of witness fees and expenses shall be made in the manner prescribed in the APA §§2001.089, 2001.103 and 67.109 of this chapter relating to (witness fees) [~~Administrative Procedure Act (Tex. Gov't Code 2001.001 et seq.)~~].

§67.105. Depositions.

Unless otherwise agreed to by the Parties pursuant to §67.11 of this chapter, the [~~The~~] taking and use of depositions in any Proceeding [~~proceeding~~] shall be governed by the APA §§2001.094 - 2001.103 [~~Administrative Procedure Act (Tex. Gov't Code §§2001.001 et seq.)~~].

§67.107. Discovery Generally.

The Parties to a contested case may engage in any type of discovery authorized by the Texas Rules of Civil Procedure and the APA. The manner and procedure for engaging in such discovery, including, but not limited to deadlines to object or respond to discovery requests, shall be the manner and procedure specified in the Texas Rules of Civil Procedure or the APA [~~Administrative Procedure Act (Tex. Gov't Code §§2001.001 et seq.)~~], whichever is applicable. Unless otherwise ordered, or the Parties otherwise agree pursuant to §67.11 of this chapter (relating to agreements to be in writing), discovery level 1 shall apply as defined in Tex. R. Civ. P. 190.2.

§67.108. Discovery Sanctions.

The provisions of Tex. R. Civ. P. 215 shall apply to Proceedings governed by this chapter, except to the extent the rule is inconsistent with the provisions of the APA or this chapter. Examiners shall not have authority to impose monetary sanctions or costs. In addition, all motions relating to discovery shall be filed with the Examiner, subject to review by the Board or its designee, except as otherwise provided in the APA, §2001.201 and §2001.202.

§67.109. Witness Fees.

Witness fees are as follows: [~~.~~]

(1) Mileage and per diem allowances are the same as those provided for state employees under applicable law or regulation [~~the General Appropriations Act~~].

(2) A standard appearance fee for each day or part of a day the Person [~~person~~] is necessarily present as a witness is set at $50. A witness who gives testimony in an expert [~~a professional~~] capacity may be paid an appearance fee of no more than twice the standard fee. The witness fee for a retained expert shall be paid by the Party who retained the witness.

(3) Fees may be tendered with service of a subpoena to compel testimony or the production of records, but otherwise shall be paid only on presentation of proper vouchers sworn by the witness and approved by ERS [~~the Employees Retirement System of Texas~~].

(4) Witness fees will be paid by ERS [~~the Employees Retirement System of Texas~~] from the funds deposited by the Party [~~person~~] who requested the witness to appear.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603641
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 867-7421

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34 TAC §67.111

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Employees Retirement System of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Employees Retirement System of Texas ("ERS") proposes the repeal of 34 Texas Administrative Code, §67.111, concerning Conflicting Claims to Benefits.

The repeal of §67.111 is proposed because this rule is superseded by Texas Government Code §815.512 and Texas Insurance Code §1551.354 regarding procedures for addressing mul-

tiple competing claims. Section 67.111 is deleted in order to avoid confusion regarding the proper procedures and remedies in addressing competing claims for ERS benefits.

Paula A. Jones, General Counsel, has determined for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule as proposed.

Ms. Jones has also determined that for each year of the first five years the repeal is in effect, the anticipated public benefit will be enhanced clarity of the proper procedures and remedies for addressing competing claims for ERS benefits. There will be no affect on small businesses. There are no anticipated economic costs to persons who are required to comply with this rule as proposed.

Comments on the proposed repeal may be submitted to Paula A. Jones, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail her at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, August 21, 2006, at 10:00 a.m.

The repeal is proposed under the Texas Government Code, §815.102 which provides authorization for the ERS Board of Trustees to adopt rules for hearings on contested cases or disputed claims. In addition, Texas Insurance Code, §1551.052 authorizes the Board of Trustees to adopt rules consistent with the chapter as it considers necessary to implement the chapter and its purposes.

The proposed repeal does not affect any other statutes, articles, or codes.

§67.111. Conflicting Claims to Benefits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603642
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 867-7421

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CHAPTER 87. DEFERRED COMPENSATION

34 TAC §§87.5, 87.7, 87.11, 87.17, 87.19, 87.31, 87.33

The Employees Retirement System of Texas ("ERS") proposes amendments to 34 Texas Administrative Code, §§87.5, 87.7, 87.11, 87.17, 87.19, 87.31, and 87.33, concerning the Deferred Compensation Plan.

These amendments are needed in order to update the Plan rules, to clarify Plan requirements, and to comport with federal law and administrative requirements.

Section 87.5(b), concerning Participation by Employees, is amended to change the name of the form from a participant agreement to an enrollment form.

Section 87.7(b) and (k), concerning Prior Plan Vendor Participation, are amended to add certain definitions regarding capitalization changes in federal regulations and to comport with the Federal Deposit Insurance Corporation Improvement Act of 1991 and the Deficit Reduction Act of 2005. Section 87.7(k) is also being amended to reflect changes on the limits on federally insured account balances in credit unions, savings and loan institutions, and banks.

Section 87.11(b), concerning Advertising Material and Solicitation, is amended to make references to the prior plan consistent with the remainder of the Chapter.

Section 87.17(a) and (j), concerning Distributions, and §87.33(h) are amended to require that the unforeseeable emergency distributions be certified in a form prescribed by the plan administrator or TPA and including representations of financial need by the participant. Section 87.17(s) is amended to change the loan amortization period from quarterly to monthly and to clarify the language related to loans.

Section 87.19(d), concerning Reporting and Recordkeeping by Prior Plan Vendors, is amended to exclude annuitized accounts in the quarterly reports and to require that the fiscal year end report must include transactions for July and August.

Section 87.31(b), concerning Revised Plan, is amended to clarify the manner of distribution.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses will not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be added flexibility for and protection of State of Texas Deferred Compensation Plan participants. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, August 21, 2006, at 10:00 a.m.

These amendments are proposed under Government Code, §609.508, which provides authorization for the ERS Board of Trustees to adopt rules necessary to administer the deferred compensation plan.

No other statutes are affected by these proposed amendments.

§87.5. Participation by Employees.

(a) (No change.)

(b) Enrollment of participants in the plan.

(1) An employee may complete an enrollment form [~~a participation agreement~~], enroll online or enroll through customer service representative at the TPA in the revised plan.

(2) (No change.)

(c) - (r) (No change.)

§87.7. Prior Plan Vendor Participation.

(a) (No change.)

(b) Eligibility requirements of a prior plan vendor.

(1) Banks. The plan administrator shall disapprove a bank's application to become a prior plan vendor if:

(A) - (B) (No change.)

(C) the bank is either not well-capitalized or is adequately capitalized but has not obtained a waiver to accept brokered deposits as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Statute 2236, the Deficit Reduction Act of 2005 (P.L.109-171), enacted on February 8, 2006, and the related regulations.

(2) - (3) (No change.)

(4) Savings and loan associations. The plan administrator shall disapprove a savings and loan association's application to become a prior plan vendor if:

(A) - (B) (No change.)

(C) the savings and loan association is either not well-capitalized or is adequately capitalized but has not obtained a waiver to accept brokered deposits as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Statute 2236, the Deficit Reduction Act of 2005 (P.L.109-171), enacted on February 8, 2006, and the related regulations.

(5) (No change.)

(c) - (j) (No change.)

(k) Limits on account balances in credit unions.

(1) (No change.)

(2) A prior plan vendor may not accept deferrals to an account if the deferrals would cause the balance of the account to exceed $250,000 [~~$100,000~~] (as amended), the amount insured by the National Credit Union Administration and National Credit Union Share Insurance Fund unless the vendor or participant has complied with paragraph (6) of this subsection.

(3) In this subsection, the term "deferred compensation information" means:

(A) the amount by which the balance of each account as of the end of the previous month exceeds $250,000 [~~$100,000~~] (as amended);

(B) (No change.)

(C) the total amount by which the balances of all reported accounts exceed $250,000 [~~$100,000~~] (as amended).

(4) Once each month, a prior plan vendor shall report deferred compensation information to the plan administrator no later than 1 p.m., central time, on a call-in day. If a prior plan vendor has no accounts that exceed $250,000 [~~$100,000~~] (as amended), the prior plan vendor must report that fact to the plan administrator.

(5) The plan administrator shall notify the agency coordinator for each participant whose account exceeds $250,000 [~~$100,000~~] (as amended). Upon receiving the notice, the agency coordinator shall request the participant to specify in a change agreement:

(A) the qualified investment product to which at least the amount in the account in excess of $250,000 [~~$100,000~~](as amended) will be moved; and

(B) (No change.)

(6) If a participant does not want funds in excess of $250,000 [~~$100,000~~] (as amended) transferred from the credit union, the participant may keep funds at the credit union if:

(A) the credit union will pledge collateral for all funds in excess of $250,000 [~~$100,000~~] (as amended) in accordance with plan administrator procedures; or

(B) (No change.)

(7) If a participant does not submit a change agreement to the agency coordinator immediately after receiving a request from the participant's agency coordinator in accordance with paragraph (5) of this subsection and if paragraph (6) of this subsection is not complied with, the agency coordinator shall notify the plan administrator. Upon receiving the notification, the plan administrator shall:

(A) initiate a transfer of the amount in the account in excess of $250,000 [~~$100,000~~] (as amended) in accordance with §87.15 of this title; and

(B) (No change.)

(l) - (m) (No change.)

§87.11. Advertising Material and Solicitation.

(a) (No change.)

(b) General requirements for advertising material.

(1) - (7) (No change.)

(8) No marketing or solicitation is allowed on prior [~~previous~~] Plan products after August 31, 2000.

(c) (No change.)

§87.17. Distributions.

(a) In general. Upon request, the plan administrator or TPA shall authorize the distribution of a participant's deferrals and investment income in accordance with the applicable distribution agreement so long as:

(1) - (6) (No change.)

(b) - (i) (No change.)

(j) Unforeseeable emergency distribution.

(1) The participant must request the unforeseeable emergency withdrawal by filing a completed emergency hardship withdrawal application with the plan administrator or TPA. An emergency hardship withdrawal application must show that the prerequisites for making an unforeseeable emergency withdrawal have been fulfilled.

(2) The plan administrator shall approve the unforeseeable emergency withdrawal if the plan administrator determines, based on a representation from the participant in a form prescribed by the plan administrator or TPA, that:

(A) - (C) (No change.)

(3) If the plan administrator or TPA approves an unforeseeable emergency withdrawal, the plan administrator shall determine the amount of the withdrawal. The amount may not exceed the amount reasonably needed to overcome the severe financial hardship, after considering the federal income tax liability resulting from the withdrawal.

(4) (No change.)

(5) The term "unforeseeable emergency" excludes:

(A) - (B) (No change.)

(C) such emergency that is or may be relieved through:

(i) (No change.)

(ii) liquidation of the participant's assets, to the extent the liquidation would not itself cause severe financial hardship; [~~or~~]

(iii) cessation of deferrals under the plan; [~~This includes other distribution or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; and~~]

(iv) other distributions or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; or

(v) through a combination of the actions specified in clauses (i) - (iv) of this subparagraph.

(D) (No change.)

(6) The plan administrator may rely on the information and certification provided by a participant in connection with the participant's request for an emergency withdrawal. The participant is solely responsible for the sufficiency, accuracy, and veracity of the information.

(7) (No change.)

(8) When submitting a [~~If the plan administrator approves a participant's~~] request for an emergency withdrawal, the participant must certify, in a form prescribed by the plan administrator, that the severe financial hardship cannot be relieved by cessation of deferrals under the plan, as well as other means set forth in paragraph (2)(B)(i) - (v) of this subsection. [~~agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the Texa$aver 401(k) plan for a six month period following the approval.~~]

(9) - (10) (No change.)

(k) - (r) (No change.)

(s) Loans to participants. The plan administrator is authorized to implement procedures to establish a loan program for the revised plan in compliance with Code §72(p)(2). Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the prior plan must transfer those balances to the revised plan in order to qualify for a plan loan. The security of the loan is a pledge. [~~or~~]There is a non-refundable application fee for each [~~of $50 per~~] loan. General loans are processed without any pre-loan paperwork. A participant's execution on the loan check authorizes the plan administrator to make payroll deductions from the participant's compensation (Code §1.401(a)-21(d)). The loan balance may be prepaid at any time without penalty. The maximum number of active loans available to any participant at any given time is two (2) per plan.

(1) - (2) (No change.)

(3) The terms of the loan shall:

(A) require level amortization with payments not less frequently than monthly [~~quarterly~~] throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the participant is on a bona fide unpaid leave of absence for military leave within the meaning of §414(u) of the Code or for the duration of a leave which is due to qualified military service;

(B) - (C) (No change.)

(4) - (5) (No change.)

(6) In the event that a participant fails to make any loan payment by the last day of the calendar quarter following the calendar quarter such payment is due, a default on the loan shall occur. In the event of such default, all remaining payments on the loan shall be immediately due and payable the day following the date on which such payment was due. In the case of any loan default, the plan administrator shall apply the portion of the participant's interest in the plan held as security for the loan in satisfaction of the loan on the date of severance from employment. In addition, the plan administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, and the costs of any legal proceeding or collection including, but not limited to the plan administrator's and TPA's reasonable attorneys fees, costs and prejudgment and postjudgment interest, shall be charged to the account balance of the participant. Any defaulted loans incurred will continue to accrue interest and will reduce the number of available loans. Amounts borrowed through the loan program are not taxable distributions and are not subject to federal income taxes, unless the participant defaults on the loan. If a participant retires or separates from employment, payroll deductions will stop and the loan is immediately due and payable in full. If the loan is not paid prior to the last day of the calendar quarter following the calendar quarter in which the payment was due, then the entire outstanding balance, pursuant to IRS regulations, will be considered a distribution, and the plan administrator shall report the loan to the IRS as a taxable distribution for the year that the loan defaults. Effective January 1, 2006, participants [~~Participants~~] may make manual payments to pay off the loan after separating from employment. [~~The new default procedures are effective January 1, 2006.~~] In the event a loan is outstanding or in default or both hereunder on the date of a participant's death, the participant's estate shall be the beneficiary as to the portion of participant's interest in the plan invested in such loan.

(7) In accordance with Code §72(p) and associated Treasury Regulations at §1.72(p)-1, the Plans will suspend payments for up to twelve (12) months for non-military leaves of absence if the participant is on a bona fide leave of absence and the leave is either without pay, or the participant's after-tax pay is less than the [~~installment~~] payment amount under the terms of the loan. When payments resume, [~~installment~~] payments may not be less than the amount required under the terms of the original loan. In no event may the term of the loan be extended beyond its original due date without approval of the plan administrator. Therefore, the participant must seek a revised amortization schedule and pay higher monthly payments or continue the original payment schedule and make one or more additional payments before the end of the loan term in sufficient amounts to pay the loan in full when due.

(8) (No change.)

(t) - (u) (No change.)

§87.19. Reporting and Recordkeeping by Prior Plan Vendors.

(a) - (c) (No change.)

(d) Reports and remittance to the plan administrator.

(1) Frequency and coverage of reports and payment of fees. Every vendor in the prior plan that has participant or beneficiary deferrals, and/or investment income, [~~and/or annuitized accounts~~] must ensure that the plan administrator receives a report no later than the 15th day after the end of each calendar quarter. The fiscal year end report must include transactions for July and August. Every prior plan vendor must also remit any fees assessed to it by the plan administrator, no later than the 15th day after the end of each quarter. Every vendor must ensure that the plan administrator receives a special report at the end of the fiscal year (August 31st), no later than fifteen days past fiscal year end - September 15th [~~5th~~], in addition to the normal quarterly reporting schedule. The report must be in the format specified in this subsection and must cover all transactions during the calendar quarter.

(2) Content of reports. For each participant or beneficiary whose deferrals and investment income are invested in a qualified in-

vestment product offered by the vendor, the report required by this subsection must contain but is not limited to:

(A) (No change.)

(B) a list of the qualified investment products in which the participant's or beneficiary's deferrals and investment income have been invested [~~even if the investment is in a product that is annuitized~~];

(C) - (E) (No change.)

(F) the current market value of each participant's or beneficiary's deferrals and investment income in each qualified investment product, [~~including annuitized accounts and,~~] including, if appropriate, the number of shares and per share market value;

(G) - (K) (No change.)

(3) - (5) (No change.)

(e) - (f) (No change.)

§87.31. Revised Plan.

(a) (No change.)

(b) Administration of the revised plan.

(1) - (2) (No change.)

(3) A participant shall select a [~~single~~] manner of distribution and a [~~single~~] date of distribution of all of the participant's investments in the revised plan.

(4) - (6) (No change.)

(c) - (e) (No change.)

§87.33. The Economic Growth and Tax Relief and Reconciliation Act.

(a) - (g) (No change.)

(h) Certification Regarding Cessation of Deferrals upon Emergency Withdrawal - In submitting a request for an emergency withdrawal, the participant must certify, in a form prescribed by the plan administrator or TPA, that the severe financial hardship cannot be relieved by cessation of deferrals under the plan, as well as other means set forth in §87.17 (j)(2)(B)(i) - (v) of this title. [~~If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the Texa$aver 401(k) plan for six months following the approval. Participants who were required to suspend deferrals as a result of an emergency withdrawal and whose suspension has equaled or exceeded 6 months as of January 1, 2002 may elect to resume contributions by re-enrolling in the revised plan.~~]

(i) - (k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603643
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 867-7421

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER B. CORRECTIONAL CAPACITY

37 TAC §152.31

The Texas Board of Criminal Justice files this notice of intent to propose a new rule Title 37, Part 6, Chapter 152, Correctional Institutions Division, Subchapter B, Correctional Capacity, §152.31, Addition to the Skyview Unit Capacity.

The purpose of the rule is to provide notice of an increase to the capacity of the Skyview Unit.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five years the rule will be in effect, enforcing or administering the rule will have minimal implications related to costs or revenues for state or local government representing the marginal cost of adding to an existing service. A total of $15,300 will be necessary to cover the cost of bunks and mattresses.

Mr. Marsh does not anticipate that there will be an economic impact on persons required to comply with the rule. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule, will be to ensure inpatient psychiatric treatment of female offenders which has the potential to positively impact public safety at the time of their release by preventing the recidivism of these offenders.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The new rule is proposed under Texas Government Code, §§499.102, 499.104, and 499.105.

Cross Reference to Statutes: Texas Government Code, §§499.103, 499.106, 499.107.

§152.31. Addition to the Skyview Unit Capacity.

At the Skyview Unit, an additional bed in each of the 34 inpatient mental health cells in C Pod increases the capacity to 562.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603656
Melinda Bozarth
Executive Assistant
Texas Department of Criminal Justice
Earliest possible date of adoption: August 20, 2006
For further information, please call: (512) 936-2347

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.95, §3.97

The Railroad Commission of Texas withdraws the proposed amendments to §3.95 and §3.97 which appeared in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1138).

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603626
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: July 6, 2006
For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.4

The Texas Board of Chiropractic Examiners withdraws the proposed amendment to §73.4 which appeared in the January 20, 2006, issue of the *Texas Register* (31 TexReg 367).

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603655
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: July 7, 2006
For further information, please call: (512) 305-6901

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 106. PERMITS BY RULE

SUBCHAPTER A. GENERAL REQUIREMENTS

30 TAC §§106.2, 106.4, 106.6, 106.8

Proposed amended §§106.2, 106.4, 106.6, 106.8, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8798), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603596

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SUBCHAPTER B. REGISTRATION FEES FOR NEW PERMITS BY RULE

30 TAC §106.50

Proposed amended §106.50, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8801), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603597

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SUBCHAPTER K. GENERAL

30 TAC §§106.261 - 106.263

Proposed repeal of §§106.261 - 106.263, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8802), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603598

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30 TAC §§106.261, 106.263, 106.268, 106.269

Proposed new §§106.261, 106.263, 106.268, 106.269, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8802), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603599

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER A. DEFINITIONS

30 TAC §116.10

Proposed amended §116.10, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8814), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603600

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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.111, §116.116

Proposed amended §116.111 and §116.116, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8816), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603601

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SUBCHAPTER D. PERMIT RENEWALS

30 TAC §116.311

Proposed amended §116.311, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8819), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603602

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SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.614, §116.615

Proposed amended §116.614 and §116.615, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8820), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603603

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SUBCHAPTER G. FLEXIBLE PERMITS

30 TAC §116.710

Proposed amended §116.710, published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8822), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603604

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §354.1450

The Texas Health and Human Services Commission (HHSC) adopts new §354.1450, relating to audits of Medicaid providers. The new rule is adopted without changes to the proposed text as published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3655) and will not be republished.

Added by the Senate Bill 630, 79th Legislature, 2005, Regular Session, §32.070 of the Human Resources Code requires HHSC to adopt rules governing the audit of Medicaid providers. New §354.1450 implements the provisions of the statute.

New §354.1450 requires that an agency conducting an audit of a Medicaid provider must notify the provider of an impending audit not later than seven days before the field audit portion of the audit begins. If the provider is an incorporated pharmacy, the auditing agency must also notify the pharmacy's corporate headquarters. Section 354.1450 does not apply to computerized audits using the Medicaid Fraud Detection Audit System or audits or investigations conducted by the Office of the Attorney General's Medicaid Fraud Control Unit, the Office of the State Auditor, the Office of the Inspector General, or the Office of the Inspector General of the U.S. Department of Health and Human Services.

HHSC received one comment on the proposed rule. The Private Providers Association of Texas expressed support for the rule as proposed.

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Human Resources Code, §32.070, which provides the Commissioner of HHSC with the authority to adopt rules governing certain audits of Medicaid providers.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 7, 2006.

TRD-200603633
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 1, 2006
Proposal publication date: May 5, 2006
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS AND GO TEXAN AND DESIGN MARKS

4 TAC §17.52, §17.55

The Texas Department of Agriculture (the department) adopts amendments to §17.52, concerning application to use GO TEXAN and Design and other department marks, and §17.55 concerning expiration dates for GO TEXAN membership renewal and fees, without changes to the proposal published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4541). The amendment to §17.52 is adopted make subsection (g) consistent with the department's current practice of providing applicant's access to the GO TEXAN mark by means other than hard copies. The amendments to §17.55 are adopted to change the procedures for renewal of a GO TEXAN membership to conform with the recent amendment of §17.52 that changed the expiration date of a membership registration from August 31 to the last day of the month corresponding to the registration anniversary date. In addition, the amendments to §17.55 are adopted to allow members to renew and receive a full year of benefits, no matter when they renew within the 366 days of the due date, thereby retaining higher membership enrollment. The amendments will also allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers.

No comments were received on the proposal.

The amendments to §17.52 and §17.55 are adopted under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the

administration of its powers and duties under the Code; and the Code, §12.0175, which provides that the department, by rule, may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state, and adopt rules necessary to administer a program established under this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603625
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 26, 2006
Proposal publication date: June 2, 2006
For further information, please call: (512) 463-4075

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CHAPTER 21. CITRUS
SUBCHAPTER C. CITRUS BUDWOOD CERTIFICATION PROGRAM

4 TAC §21.30, §21.40

The Texas Department of Agriculture (the department) adopts amendments to §21.30 and new §21.40, concerning the citrus budwood certification program, without changes to the proposal as published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4542). The amendments and new section are adopted to define two terms, to classify specified varieties of citrus as mandatory with regard to the use of certified budwood in their production and to establish requirements related to the production of those varieties.

The amendments to §21.30 define mandatory variety and mandatory. New §21.40 requires certified budwood be used for the production of "Rio Red" grapefruit trees, "Standard" and "Olinda" valencia orange trees, "N-33" navel orange trees, "Marrs" and "Pineapple" orange trees, "Meyer" lemon trees, plus "Thorny Mexican" and "Thornless Mexican" lime trees produced in Texas on or after September 1, 2006. The adoption of the amendments and new section will allow for an adequate supply of citrus trees produced with pest free citrus budwood.

No comments were received on the proposal.

The amendments to §21.30, and new §21.40, are adopted under the Texas Agriculture Code (the Code), §19.006, which provides the department with authority, with the advice of the Citrus Budwood Advisory Council, to adopt rules necessary to administer the citrus budwood certification program; and the Code, §71.005, which provides the department with the authority to adopt rules as necessary to restrict movement of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603624
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 26, 2006
Proposal publication date: June 2, 2006
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning accountability. The amendment is adopted without changes to the proposed text as published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4557) and will not be republished. Section 97.1001 describes the state accountability rating system and adopts applicable excerpts of the most recently published accountability manual. The amendment adopts applicable excerpts of the *2006 Accountability Manual*, dated May 2006.

Legal counsel with the TEA has recommended that the procedures for issuing accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1001 to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2006 Accountability Manual*, dated May 2006, into rule as a figure. The excerpts, *Chapters 2-6, 8, 10-12, 14-16*, and *Appendix I* of the *2006 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings, both standard and alternative education accountability, for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine Gold Performance Acknowledgment (GPA) on additional indicators for Texas public school districts and campuses. In addition, these chapters specify procedures for submitting an appeal and evaluating districts and campuses impacted by Hurricanes Katrina and/or Rita. The TEA will issue accountability ratings under the procedures specified in the *2006 Accountability Manual* in August 2006. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075.

In 2006, campuses and districts will be evaluated using four base indicators: Texas Assessment of Knowledge and Skills (TAKS) results, completion rates, annual dropout rates, and student performance on the State Developed Alternative Assessment (SDAA) II. In 2006, the GPA system will award acknowledgment on 14 separate indicators to districts and campuses rated *Academically Acceptable* or higher: Attendance Rate for Grades 1-12; Advanced Course/Dual Enrollment Completion; Advanced Placement/International Baccalaureate Results; College Admissions Test Results; Commended Performance on Reading/English Language Arts (ELA), Mathematics, Writing, Science and/or Social Studies; Recommended High School Program/Distinguished Achievement Program Participation; Comparable Improvement on Reading/ELA and Mathematics; and Texas Success Initiative - Higher Education Readiness Component on ELA and/or Mathematics.

No changes were made to the rule or manual excerpts adopted as rule since published as proposed.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Education Code (TEC), §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e), which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 10, 2006.

TRD-200603657
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 30, 2006
Proposal publication date: June 2, 2006
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 74. CHIROPRACTIC FACILITIES

22 TAC §74.3

The Texas Board of Chiropractic Examiners (Board) adopts an amendment without change to §74.3, relating to the annual renewal of chiropractic facilities. The proposed amendment was published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 369). The proposed amendments are intended to improve the oversight of chiropractic facilities.

The amendment to subsection (a) will require that, when the owner of a facility is not a licensed chiropractor, the facility must submit each year information on the hours of operation of each clinic, the names and working hours for each licensed chiropractor, and the names and working hours for each personnel at the clinic.

The new subsection (e) will allow the Board to close a facility's files if the facility's certificate of registration has been expired for more than a year. This will allow the Board to better oversee the operating facilities and will relieve the Board from having to send renewal notices to closed facilities.

No comments were received on the proposed amendment.

Glenn Parker, Executive Director, has determined that for the first five-year period the new amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended rule.

Mr. Parker has determined that there will be a de minimis cost to persons who are required to comply with the proposed amendments for each of the first five years that the additional reporting required under the proposed amendment is in effect. For each of the first five years that additional reporting required under the proposed amendment is in effect, the public benefit will be an increased oversight of chiropractic facilities.

The amendments are adopted under Texas Occupation Code §§201.152, relating to rules; 201.312, relating to registration of facilities; 201.351, relating to annual registration; and 201.1555, relating to Fraud. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1555 requires that the Board adopt rules to prevent fraud in the practice of chiropractic, including rules relating to records required to be maintained. Section 201.312 authorizes the Board to adopt requirements for registering chiropractic facilities as necessary to protect the public health, safety, and welfare. Section 201.351 authorizes the Board to prohibit a chiropractor from practicing chiropractic in this state unless the chiropractor annually registers with the board not later than January 1 of each year.

No other statutes, articles, or codes are affected by the proposed rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603618
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: July 26, 2006
Proposal publication date: January 20, 2006
For further information, please call: (512) 305-6901

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CHAPTER 75. RULES OF PRACTICE

22 TAC §75.15

The Texas Board of Chiropractic Examiners (Board) adopts new §75.15, relating to peer review committees, as required by HB 972, Acts 2005, 79th Leg., r.s., ch. 1020, and as necessary to clarify the rules for the investigation of complaints. The proposed

rule was published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 370). The rule is adopted without changes.

This adopted new rule will not alter the Board's practice in the exercise of its investigation discretion. The Board will, however, publish its schedule of investigative and complaint priorities on its web site (www.tbce.state.tx.us).

No comments were received on the proposed rule.

Glenn Parker, Executive Director, has determined that, for the first five-year period, the adopted new rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the new section.

Mr. Parker has also determined that, for each year of the first five-year period the adopted new rule is in effect, the public benefit will be a greater clarity of the Board's procedures. Mr. Parker has determined that there will be no economic costs to persons who are required to comply with the new section. There will be no effect to small or micro businesses.

The new rule is adopted under the Texas Occupations Code, §201.251, relating to peer review committees. Section 201.251 authorizes the Board to appoint local chiropractic peer review committees from a list of nominees submitted by the local chiropractic association to conduct peer review procedures. Additionally, §201.252(c) provides that the Board shall establish requirements for peer review training programs that do not discriminate against any chiropractor.

No other statutes, articles, or codes are affected by the proposed rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603617
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: July 26, 2006
Proposal publication date: January 20, 2006
For further information, please call: (512) 305-6901

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 295. OCCUPATIONAL HEALTH

SUBCHAPTER H. HAZARDOUS CHEMICAL RIGHT-TO-KNOW

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§295.181 - 295.183, and new §§295.181 - 295.183, concerning the criteria needed to comply with the Community Right-to-Know Acts. New §§295.181 - 295.183 are adopted with changes to the proposed text as published in the January 13, 2006, issue of the *Texas Register* (31 TexReg 267). The repeal of §§295.181 - 295.183, is adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeal of the current rules and adoption of new rules is necessitated by substantive changes made to consolidate the Manufacturing Facility Community Right-to-Know, the Public Employer Community Right-To-Know, and the Nonmanufacturing Facilities Community Right-To-Know sections for better flow of the rules and reorganization. Duplicate verbiage has been removed and similar sections of the three sections have been combined.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 295.181 - 295.183 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

New §295.181 provides for the purpose, scope and compatibility of these rules with federal laws. It also defines exclusions to these rules for certain hazardous chemicals and other items. This section includes all definitions used in the other sections of this rule.

New §295.182 defines the responsibilities and requirements of facility operators with the specific criteria needed to comply with the Health and Safety Code, Chapters 505-507.

New §295.183 details the department's right to conduct compliance inspections and investigate complaints. This section also defines the department's administrative penalty authority and lists the registration fees.

Specific changes from the previous rules include consolidating the regulations into one set of rules for all three of the Texas Community Right-to-Know Acts (TCRAs), as opposed to the current rule structure, which provides a separate rule section for each individual act; updating agency references that resulted from the creation of the department and the functionalization of programs within the new agency; requiring electronic submission of Tier Two Chemical Inventory Reports and specifying the procedures for submitting these electronic files; amending the Complaints and Investigations sections to clarify that specific actions that interfere with agency inspections shall be considered violations of the TCRAs and the rules; and amending the Administrative Penalties sections to clarify that penalties may be assessed on a per day basis for failure to file the electronic Tier Two Report by required deadlines.

COMMENTS

The department, on behalf of the commission, did not receive any public comments regarding the proposed rules during the comment period.

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following changes that will clarify the intent and improve the accuracy of the sections.

Change: Concerning §295.181(g)(16), the wording was changed to state "...which are staffed 20 hours per week or less" instead of "...which are staffed less than 20 hours per week".

Change: Concerning §295.181(g)(27) and §295.183(b)(15)(B)(iv), the words "Electronic-Filing" were added to the term "Texas Tier Two Cover Sheet form".

Change: Concerning §§295.181 and 295.183, typographical, punctuation and grammatical corrections were made.

Change: Concerning §295.182(a), the website address and telephone numbers for the Tier Two Chemical Reporting Program were added.

Change: Concerning §295.182(b)(12)(A)(i), wording was added to appropriate facility identifiers such as latitude and longitude coordinates when a facility's location does not have a street address for a reportable chemical.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §§295.181 - 295.183

STATUTORY AUTHORITY

The adopted repeals are authorized by Health and Safety Code, §§505.016, 506.017, and 507.013, which provide the former Texas Board of Health (board) with the authority to adopt necessary rules to administer and enforce Chapters 505, 506, and 507; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission, not withstanding any other law, to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603612
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: July 25, 2006
Proposal publication date: January 13, 2006
For further information, please call: (512) 458-7111 x6972

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25 TAC §§295.181 - 295.183

STATUTORY AUTHORITY

The adopted new sections are authorized by Health and Safety Code, §§505.016, 506.017, and 507.013, which provide the former Texas Board of Health (board) with the authority to adopt necessary rules to administer and enforce Chapters 505, 506, and 507; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission, not withstanding any other law, to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§295.181. General Provisions and Definitions.

(a) Purpose. The purpose of these rules is to provide facility operators with specific criteria needed to comply with the Manufacturing Facility Community Right-to-Know Act, Health and Safety Code (HSC), Chapter 505; the Public Employer Community Right-to-Know Act, HSC, Chapter 506; and the Nonmanufacturing Facilities Community Right-to-Know Act, HSC, Chapter 507.

(b) Scope. These rules are applicable to operators of all facilities covered by HSC, Chapters 505, 506, or 507.

(c) Compatibility with Federal Laws. In order to avoid confusion among manufacturing employers, public employers, nonmanufacturing facilities, and persons living in this state, the Texas Department of State Health Services shall implement the Manufacturing Facility Community Right-To-Know Act, the Public Employer Community Right-to-Know Act, and the Nonmanufacturing Facilities Community Right-to-Know Act compatibly with the federal Emergency Planning and Community Right-To-Know Act (EPCRA), which is also known as the Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III (42 USC §11001 et seq.), and related regulations (Title 40, Code of Federal Regulations (CFR), Parts 355-370), promulgated by the United States Environmental Protection Agency (EPA).

(d) Exclusion for Certain Hazardous Chemicals. These rules do not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR, Part 355, Appendices A and B.

(e) Other Exclusions. This rule does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. §1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(f) Severability. Should any section or subsection in this subchapter be found to be void for any reason, such finding shall not affect any other sections.

(g) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) 505 Act--The Manufacturing Facility Community Right-To-Know Act, Health and Safety Code, Chapter 505.

(2) 506 Act--The Public Employer Community Right-To-Know Act, Health and Safety Code, Chapter 506.

(3) 507 Act--The Nonmanufacturing Facilities Community Right-To-Know Act, Health and Safety Code, Chapter 507.

(4) Appropriate facility identifiers--A physical location identification which provides a physical street address or other location identifiers, which are sufficient for emergency planning purposes and for data management by the department.

(5) Article--a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(6) Commissioner--The Commissioner of the Department of State Health Services. The Commissioner is referred to as the "director" in the 505 Act §505.004(6), the 506 Act §506.004(6), and the 507 Act §507.004(6).

(7) Current Tier Two threshold--A quantity which is assigned to a specific hazardous chemical or extremely hazardous substance in the most recent version of Title 40 CFR, Part 370, and which determines whether a specific hazardous chemical or extremely hazardous substance must be included on the Tier Two form.

(8) Department--The Department of State Health Services.

(9) Electronic Tier Two file--An electronic data file that contains, at a minimum, all of the information required for submission in a hard copy Tier Two form, and which provides the required Tier Two information for each individual reportable chemical. This data file must be prepared using software that has been approved by the department.

(10) EPCRA or SARA, Title III--The federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 USC, §§11001-11050, and regulations promulgated by the EPA in Title 40, CFR, Parts 355-370.

(11) EHS or extremely hazardous substance--Any substance as defined in EPCRA, §11002, or listed by the EPA in Title 40, CFR, Part 355, Appendices A and B.

(12) Facility--All buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person.

(13) Facility chemical list--A chemical inventory that provides information for all reportable hazardous chemicals and EHSs present at a reporting facility, and which is submitted to the department in the form of a completed electronic Tier Two file.

(14) Facility operator--The person who controls the day-to-day operations of the facility.

(15) Fire chief--The elected or paid administrative head of the fire department having jurisdiction over a facility.

(16) Headquarters facility--Either the facility itself when the facility is staffed more than 20 hours per week, or, for facilities which are staffed 20 hours per week or less, the headquarters facility is an office which is staffed full time by the facility operator and which serves as the central office for staff who are responsible for overseeing the operations of the facility.

(17) Latitude and longitude--A mapping coordinate system, designated in units of decimal degrees, which serves as a facility location description on the Tier Two form in lieu of a street address.

(18) LEPC--The Local Emergency Planning Committee, a group of individuals representing a designated emergency planning district and whose membership on the committee has been approved by the Texas State Emergency Response Commission as meeting the requirements of EPCRA, §11001.

(19) Manufacturing facilities--Facilities in Standard Industrial Classification (SIC) Codes 20-39 or North American Industrial Classification System (NAICS) Codes 31-33.

(20) Nonmanufacturing facilities--Facilities, other than those facilities operated by the state or political subdivisions of the state, and which are classified in SIC Codes 01-19 or SIC Codes 40-99 or NAICS Codes 11-23 or NAICS Codes 42-92.

(21) North American Industrial Classification System (NAICS) Code--The six-digit number which describes a facility's primary activity, which is determined by its principal product or group of products produced. The NAICS Codes were developed jointly by the U.S., Canada, and Mexico to provide comparability in statistics about business activity across North America and has replaced the U.S. Standard Industrial Classification (SIC) system. For the purposes of these rules, the NAICS Code is the one that is assigned to a facility by the Texas Workforce Commission. If a facility does not have a NAICS Code assigned by the Texas Workforce Commission, then the department must be consulted for assistance in determining the correct code.

(22) Public employer facilities--Facilities operated by the state or political subdivisions of the state. These include educational institutions such as the University of Texas.

(23) Research laboratory--A laboratory that engages in only research or quality control operations. Chemical specialty product manufacturing laboratories, full scale pilot plant operation laboratories that produce products for sale, and service laboratories are not research laboratories.

(24) Standard Industrial Classification (SIC) Code--The four-digit number which describes a facility's primary activity, which is determined by its principal product or group of products produced. This code is outdated and has been replaced with the NAICS Code.

(25) Submission or required submission--The facility chemical list information which is submitted to the department in the form of an electronic Tier Two file for a single facility. When

facility chemical list information for multiple facilities is submitted to the department as one electronic Tier Two file, then the electronic Tier Two file shall be counted by the department as multiple required submissions.

(26) Technically qualified individual--An individual with a professional education and background working in the research or medical fields, such as a physician, a registered nurse, or an individual holding a college bachelor's degree in science.

(27) Texas Tier Two Electronic Filing Cover Sheet form--A form developed by the department to collect general information about each reporting facility which is submitting an electronic Tier Two file.

(28) Tier Two form--An electronic document that provides information for all reportable hazardous chemicals and EHSs present at a reporting facility. An "annual Tier Two form" provides the information for all hazardous chemicals and EHSs present at a facility at any time during the previous calendar year in quantities that met or exceeded the then current Tier Two thresholds. An "initial Tier Two form" is one that provides information for hazardous chemicals or EHSs that meet or exceed the current Tier Two thresholds, but which were not reported on a previously submitted annual Tier Two form. An "updated Tier Two form" is one that provides significant new information concerning an aspect of one or more hazardous chemicals or EHSs which were previously reported on either the annual or first time Tier Two forms submitted by a facility, and contains all the required information for hazardous chemicals or EHSs at the facility that meet or exceed the current Tier Two thresholds. A "modified Tier Two form" provides information for all hazardous chemicals and EHSs that are present at a facility at a threshold of 500 pounds; this type of report may be prepared in response to a request from a citizen for information, in lieu of the workplace chemical list.

(29) Workplace chemical list--A list of hazardous chemicals developed under Title 29 CFR, §1910.1200(e)(1)(i), or the Texas Hazard Communication Act, §502.005(a).

§295.182. Responsibilities and Requirements.

(a) Responsibility for implementation of program. The department's responsibilities under the 505 Act, the 506 Act, and the 507 Act are carried out through the Department of State Health Services, Tier Two Chemical Reporting Program. Compliance documents and routine inquiries regarding this Rule shall be addressed to the Department of State Health Services, Tier Two Chemical Reporting Program, 1100 West 49th Street, Austin, Texas 78756-3199, website: www.texastiertwo.com, 512-834-6603, or at the in-Texas only toll-free telephone number 1-800-452-2791.

(b) Facility chemical list.

(1) A facility operator covered by the 505 Act, the 506 Act, or the 507 Act shall compile and maintain a facility chemical list using the most current version of the electronic Tier Two software program.

(2) Facility operators shall file an annual Tier Two form and the appropriate filing fee with the department no later than March 1 of each year.

(3) A facility operator required to submit an annual Tier Two form under paragraph (2) of this subsection shall furnish a copy of this form no later than March 1 of each year to the following entities:

(A) the appropriate fire chief; and

(B) the appropriate LEPC.

(4) A facility operator shall submit an initial Tier Two form and the appropriate filing fee to the department within 90 days after the date that the facility operator:

(A) begins operation and acquires one or more hazardous chemicals or EHSs which meet or exceed any of the current Tier Two thresholds; or

(B) first acquires one or more hazardous chemicals or EHSs which meet or exceed any of the current Tier Two thresholds and which were not reported on the most recently submitted annual Tier Two form; or

(C) determines that one or more hazardous chemicals or EHSs which meet or exceed any of the current Tier Two thresholds were omitted from the most recently submitted annual Tier Two form.

(5) A facility operator required to submit an initial Tier Two form under paragraph (4) of this subsection shall furnish a copy of this form within 90 days after the date that the facility operator first becomes subject to the requirements of paragraph (4) of this subsection to the following entities:

(A) the appropriate fire chief; and

(B) the appropriate LEPC.

(6) A facility operator shall file an updated Tier Two form with the department not later than the 90th day after the date on which the operator discovers significant new information concerning an aspect of a previously reported hazardous chemical or EHS which was reported on either an annual or initial Tier Two form submitted by the facility. No fee will be charged for filing this report.

(7) A facility operator required to submit an updated Tier Two form under paragraph (6) of this subsection shall furnish a copy of this form within 90 days after the date that the facility operator first becomes subject to the requirements of paragraph (6) of this subsection to the following entities:

(A) the appropriate fire chief; and

(B) the appropriate LEPC.

(8) A facility operator covered by this section must submit to the department an electronic Tier Two file of the facility chemical list using software and a submission procedure that has been approved by the department. A copy of the completed versions of the electronic Tier Two file, any other document required by the department, and the appropriate filing fee shall be submitted to the department to comply with this subsection.

(9) A facility operator must contact the fire chief for approval to submit an electronic Tier Two file of the facility chemical list in lieu of the printed copy of the electronic Tier Two file. If approved by the fire chief, a facility operator may submit an electronic Tier Two file of the facility chemical list and be in compliance with this subsection. A facility operator must contact the chair of the LEPC for approval to submit an electronic Tier Two file of the facility chemical list in lieu of the printed copy of the electronic Tier Two file. If approved by the LEPC chair, a facility operator may submit an electronic Tier Two file of the facility chemical list and be in compliance with this subsection.

(10) A facility operator shall maintain at the headquarters facility either an electronic file or a printed copy of the facility's current annual Tier Two form until such time as the facility operator files the following year's annual Tier Two form with the department.

(11) Multiple facilities may be reported in the same Tier Two electronic file, as long as all of the facilities are under the control of a single facility operator.

(12) In providing appropriate facility identifiers, a facility operator shall provide under the Facility Identification sections of the Texas Tier Two form one of the following descriptions:

(A) for a facility located within a city's limits, the description must provide the following information:

(i) the street address or, if the facility does not have a street address, the latitude and longitude coordinates for the facility;

(ii) the name of the city; and

(iii) the zip code for the facility.

(B) for a facility located in an area outside of a city's limits, the description must include either a street address or the latitude and longitude for the facility. Latitude and longitude values shall be given in units of decimal degrees to four decimal places. Latitude and longitude values shall be obtained using a Global Positioning System instrument which has been calibrated to either the North American Datum of 1983 or the World Geodesic System of 1984.

(c) Direct citizen access to information.

(1) A manufacturing or public employer facility must provide within 10 working days of the date of receipt of a citizen's request under the 505 Act, §505.007(a), or the 506 Act, §506.007(a), a paper copy of the facility's existing workplace chemical list or a paper copy of the modified Tier Two form using a 500-pound threshold for each hazardous chemical at the facility. Except as otherwise provided in this section, such documents shall be furnished or mailed to the citizen requesting the information. The modified Tier Two form must include completed chemical description blocks for each chemical reported.

(2) A manufacturing or public employer facility that has received five requests under paragraph (1) of this subsection in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the department so the department may respond to further requests for information about hazardous chemicals at the facility.

(3) A manufacturing or public employer facility electing to furnish materials to the department must notify the department in writing, and must provide to the department copies of the previous requests which meet the request frequency rate as specified in paragraph (2) of this subsection. The facility must inform persons making requests under paragraph (1) of this subsection of the availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the department and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

§295.183. Compliance and Fees.

(a) Complaints and investigations.

(1) The department has the right to inspect. The commissioner or his designated representatives may enter a facility at reasonable times to conduct compliance inspections. Advance notice is not required. It is a violation of these rules for a person to interfere with, deny, or delay an inspection or investigation conducted by a department representative.

(2) The commissioner or his designated representative shall investigate in a timely manner a complaint relating to an alleged violation of the 505 Act, the 506 Act, the 507 Act or these rules. Such complaints do not have to be submitted to the department in writing and may be anonymous. An inspection based on a complaint is not limited to the specific allegations of the complaint. A facility operator who refuses to allow such an investigation shall be in violation of these rules. Complaints are not necessary to conduct an inspection.

(3) The department may find multiple violations by a facility operator based on specific requirements of the 505 Act, the 506 Act, the 507 Act or these rules.

(4) Upon request from a representative of the commissioner, a facility operator shall make or allow photocopies of documents to be made and permit the representative to take photographs to verify the compliance status of the employer. Such requests may be made during a compliance inspection or a follow-up request after an inspection.

(b) Administrative penalties.

(1) Inspections may be conducted by the commissioner or his designated representative to determine if persons are in violation of the 505 Act, the 506 Act, the 507 Act or these rules. Persons found to be in violation will be notified in writing of any alleged violations and proposed penalties or other enforcement action.

(2) Manufacturing facility operators found to be in violation of the 505 Act or these rules are subject to administrative penalties, as authorized by the 505 Act, to be administered in accordance with the procedures detailed in the 505 Act, §§505.010, 505.011, and 505.012, and this section.

(3) Public employer facility operators found to be in violation of the 506 Act or these rules are subject to administrative penalties, as authorized by the 506 Act, to be administered in accordance with the procedures detailed in the 506 Act, §§506.010, 506.011, and 506.012, and this section.

(4) Nonmanufacturing facility operators found to be in violation of the 507 Act or these rules are subject to administrative penalties, as authorized by the 507 Act, to be administered in accordance with the procedures detailed in the 507 Act, §§507.009, 507.010, and 507.011, and this section.

(5) Each violation may be assessed as a separate penalty. The total penalty for a violation is the sum of all per day violation penalties.

(6) Penalties shall be due after an order is issued by the commissioner. An order may be issued on or after the 16th business day following the date that a written notification of violation is received by the facility operator, unless the department receives an acceptable written response that documents that each violation has been corrected, an informal conference has been requested, or a formal hearing has been requested. If an informal conference is held, the facility operator must respond as set forth in paragraph (8) of this subsection within 10 days after the facility operator receives a summary letter following the informal conference.

(7) If a violation involves a failure to make a good faith effort to comply with these rules by a manufacturing facility or a nonmanufacturing facility, the commissioner may assess the administrative penalty at any time.

(8) The written response to the department's summary letter from the facility operator must address each violation separately and must provide the documentation requested by the department or an acceptable alternative agreed to by the department. An inappropriate or unacceptable response may result in a penalty being assessed for the underlying violations.

(9) Violations will be classified in one of three severity levels:

(A) a minor violation is related to a minor records keeping deficiency;

(B) a serious violation is related to failure to pay filing fees for required submissions, minor omissions of information from Tier Two forms, or substantial records keeping deficiencies; or

(C) a critical violation is related to substantial omissions of information from Tier Two forms, failure to submit required information, or denial of entry.

(10) For manufacturing facilities, a penalty may be assessed, not to exceed $500 a day for each day a violation continues, with a total penalty not to exceed $5,000 for each violation.

(11) For public employer facilities and nonmanufacturing facilities, a penalty may be assessed, not to exceed $50 a day for each day a violation continues, with a total penalty not to exceed $1,000 for each violation.

(12) Individual penalties may be reduced or enhanced based on consideration of the history of previous violations, the degree of hazard to the health and safety of the public, good-faith efforts made to correct violations promptly, and on any other consideration that justice may require.

(13) Failure to file a Tier Two form with the department will be considered a violation that may not require an inspection. Other violations may be confirmed by the department through correspondence with authorized company officials and may not warrant an inspection.

(14) At its option, the department may accept appropriate documentation provided by the facility as evidence of compliance status.

(15) Examples of violations for the various severity levels include, but are not limited to:

(A) minor violations having a penalty of $100 per day for manufacturing facilities and $10 per day for public employer facilities and nonmanufacturing facilities:

(i) failure to sign or date Tier Two forms filed with the department;

(ii) failure to maintain a copy of an updated Tier Two form at the facility; or

(iii) failure to provide adequate chemical description information required for each hazardous chemical on the Tier Two form.

(B) serious violations having a penalty of $300 per day for manufacturing facilities and $30 per day for public employer facilities and nonmanufacturing facilities:

(i) failure to include significant information regarding reportable quantity hazardous chemicals on any Tier Two form submitted to the department, the fire chief, or the LEPC;

(ii) failure to file an initial Tier Two form with the department, the fire chief, or the LEPC, within 90 days after the date on which the operator begins operation or the facility exceeds the reporting threshold for a previously unreported hazardous chemical;

(iii) failure to submit the appropriate Tier Two form filing fee to the department;

(iv) failure to provide significant information required for the Texas Tier Two Electronic Filing Cover Sheet; or

(v) failure to provide a map when required for submission of a Tier Two form.

(C) critical violations having a penalty of $500 per day for manufacturing facilities and $50 per day for public employer facilities and nonmanufacturing facilities:

(i) failure to include significant information related to hazardous chemicals on a Tier Two form submitted to the department, the fire chief, or the LEPC;

(ii) failure to submit a required Tier Two form to the department, the fire chief, or the LEPC;

(iii) interfering with, denying or delaying an inspection or investigation conducted by a representative of the department;

(iv) interfering with, denying or delaying an on-site inspection of a facility conducted by the fire chief or the fire chief's representative;

(v) upon request from a fire chief or LEPC, failure to provide such additional information as is needed for planning purposes; or

(vi) upon request from a citizen, failure to provide within the time limits specified in §295.182(c)(1) of this title a copy of the facility's existing workplace chemical list or a modified Tier Two form using a 500-pound threshold for all hazardous chemicals at the facility.

(c) Fees.

(1) The department shall charge a fee for each required annual and initial Tier Two form. The fee must accompany the Tier Two form when submitted to the department.

(2) Annual fees for the annual and initial Tier Two forms are based on the number of hazardous chemicals present at a facility and shall be:

(A) For a manufacturing facility:

(i) $100 for each required submission having no more than 25 hazardous chemicals;

(ii) $200 for each required submission having no more than 50 hazardous chemicals;

(iii) $300 for each required submission having no more than 75 hazardous chemicals;

(iv) $400 for each required submission having no more than 100 hazardous chemicals; or

(v) $500 for each required submission having more than 100 hazardous chemicals.

(B) For a public employer facility or nonmanufacturing facility:

(i) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(ii) $100 for each required submission having more than 75 hazardous chemicals or hazardous chemical categories.

(3) For the purpose of minimizing fees, the department shall provide for consolidated filing of multiple Tier Two forms for facility operators if:

(A) each of the Tier Two forms contain fewer than 25 chemicals;

(B) each of the Tier Two forms are filed by a single operator or a single operator's authorized representative, with an identical operator's name and address on each Tier Two form in the consolidated filing;

(C) all consolidated Tier Two forms are mailed to the department in the same package; and

(D) the number of required submissions that are consolidated do not exceed the following:

(i) for manufacturing facilities, no more than two required submissions; or

(ii) for public employer facilities or nonmanufacturing facilities, no more than seven required submissions.

(4) Fees paid by mail must be paid by check or money order (cash payments are not acceptable) to the Department of State Health Services and must be addressed to: Department of State Health Services, Tier Two Chemical Reporting Program, ZZ109-180, P.O. Box 149200, Austin, Texas 78714-9200. Checks or money orders must contain the following information: "Budget ZZ109 Fund 180."

(5) No receipt will be provided for payment of fees which are mailed, but a canceled check may be considered adequate proof of payment.

(6) The department may refund a fee overpayment to a facility operator provided that:

(A) the facility operator provides, in writing, proof of payment, the date(s) on which the required submissions and fees were sent to or received by the department, the circumstances that caused the overpayment, and the reasons why it would have been considered an overpayment under the rules in force at the time of the original filing;

(B) the facility operator requests the refund in writing within 90 calendar days of the date on which the required submissions and fee were received by the department; and

(C) the facility operator pays the department a processing fee of $20 per refund.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 5, 2006.

TRD-200603613
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: July 25, 2006
Proposal publication date: January 13, 2006
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER O. NOTICE OF AVAILABILITY OF COVERAGE UNDER THE TEXAS HEALTH INSURANCE RISK POOL

28 TAC §§21.2302 - 21.2306

The Commissioner of Insurance adopts amendments to §§21.2302 - 21.2306, concerning notice of availability of coverage under the Texas Health Insurance Risk Pool (Health Pool). Section 21.2304 and §21.2306 are adopted with nonsubstantive changes to the proposed text published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3656). Sections 21.2302, 21.2303, and 21.2305 are adopted without changes.

The adopted amendments are necessary to implement SB 809, enacted by the 79th Legislature, Regular Session, effective January 1, 2006, which, in part, amends the Insurance Code, §1506.152 to address eligibility for pool coverage. The primary purpose of SB 809 is to amend Chapter 1506 to make risk pool operations more cost-effective, efficient, and equitable. The amendments to the rules modify the definitions, notice requirements, and form used for notification of an individual's eligibility for coverage under the Health Pool.

The Department made one nonsubstantive change to the published proposed amendment to §21.2304(b) by conforming §21.2304(b)(5) to reflect that the amendments to §21.2305 as adopted delete subsection (b) and its reference to Figure 1, since the amended notice will not be filed with the Secretary of State's Office and is not adopted by reference in the text of the rule. The change conforms the cross reference in §21.2304(b)(5) to the Form Health Pool Notice as referenced in §21.2305 and as subsequently updated. The change does not introduce new subject matter or affect additional persons other than those subject to the proposal as published.

The Department made one nonsubstantive change to the published proposed amendment to §21.2306 by eliminating the reference to subparagraph (D) of §21.2304(b)(3) in the §21.2306 reference to amendments to §21.2304(b)(3). The change does not introduce new subject matter or affect additional persons other than those subject to the proposal as published.

The adopted amendments to §21.2302 make necessary conforming changes to the definitions of "covered individual," "health carrier," and "health coverage and substantially similar health coverage," by substituting the term "benefit plan issuer" for the term "carrier." These changes are needed as a result of the enactment of the nonsubstantive Insurance Code revision by the 78th Legislature, Regular Session, effective April 1, 2005 (78th Legislature code revision).

The adopted amendments to §21.2303 remove the requirement that a health benefit plan issuer provide written notice of Health Pool availability when the issuer offers substantially similar health coverage to or for an eligible individual who has applied for health coverage from the issuer, but at rates higher than the issuer's standard rate. SB 809 deletes this condition as a qualifier for Health Pool eligibility. The adopted amendments also make necessary conforming changes to §21.2303 by substituting the term "benefit plan issuer" for the term "carrier," based on the 78th Legislature code revision.

The adopted amendments to §21.2304 change the Form Health Pool Notice referenced in §21.2305 from a formal Figure filed with the Secretary of State's Office and adopted by reference to a form to be provided by the Department and available on

its website. The Department will provide this form for a health benefit plan issuer to use at its option when providing either the mandatory or permissive notice. The adopted amendment to §21.2304(b)(3) removes former subparagraph (D) from the listing of reasons an individual may be eligible for coverage under the Health Pool, and redesignates remaining subparagraphs. Former subparagraph (D) had provided that an individual may be eligible for Health Pool coverage when the issuer offers substantially similar health coverage with rates that exceed the rates of the Health Pool. SB 809 deletes that qualifier from among those specified in the Insurance Code §1506.152(a)(3). The adopted amendments also make necessary conforming changes to §21.2304 by substituting the term "benefit plan issuer" for the term "carrier," based on the 78th Legislature code revision.

The adopted amendments to §21.2305 direct that the Form Health Pool Notice can be obtained from the Department and update the mailing address; the amendments also indicate that the notice is available at the Department's website. The adopted amendments also delete subsection (b) and its reference to Figure 1, since the amended notice will not be filed with the Secretary of State's Office and is not adopted by reference in the text of the rule.

The adopted amendments to §21.2306 specify the effective date pertaining to certain sections of this adoption. In accordance with SECTIONS 11 and 13 of SB 809, the adopted amendments to §21.2303(a) and §21.2304(b)(3) are effective for any application for health coverage received, processed, or acted upon by a health benefit plan issuer on or after January 1, 2006. The other adopted amendments will be effective pursuant to the Government Code, §2001.036, which provides that a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State.

SUMMARY OF COMMENTS. The Department did not receive any comments on the proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Insurance Code Chapter 1506 and §36.001. Section 1506.005 provides that the Commissioner may adopt rules as necessary and proper to implement the chapter. Section 1506.007(b) states that an insurer providing notice pursuant to the section shall provide such notice as prescribed by the Commissioner. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.2304. Notice.

(a) The health benefit plan issuer may use the Form Health Pool Notice referenced in §21.2305 of this title (relating to Form) when issuing the notice required by §21.2303(a) of this title (relating to Delivery of Notice).

(b) In lieu of the notice outlined in subsection (a) of this section, a health benefit plan issuer may opt to provide a notice that contains substantially similar language to the language contained in the Form Health Pool Notice referenced in §21.2305 of this title (relating to Form). The substantially similar language shall be in a readable and understandable format and shall include a clear, complete, and accurate description of the items set out in paragraphs (1) - (5) of this subsection in the following order:

(1) a heading in bold print and all capital letters indicating the information in the notice relates to availability of coverage under the Health Pool;

(2) a statement in bold print that the notice is being provided to advise the individual that he/she may be eligible for coverage from the Health Pool;

(3) a listing of the reasons an individual may be eligible for coverage under the Health Pool which are:

(A) one written refusal or rejection for substantially similar health coverage from a health benefit plan issuer due to a medical condition;

(B) a certification from an agent or salaried representative of a health benefit plan issuer, on a form developed by the Texas Health Pool Board of Directors (Board) and approved by the commissioner, that states the agent or salaried representative is unable to obtain substantially similar health coverage for the individual with a health benefit plan issuer represented by the agent or salaried representative because, based on the health benefit plan issuer's underwriting guidelines, the individual will be declined for coverage as a result of a medical condition;

(C) the offer of substantially similar health coverage with a rider that excludes certain health conditions of the individual and an example of such rider similar to the following: For example, a health benefit plan issuer will provide coverage to the individual with an exclusion of the individual's diabetes, heart disease, cancer, etc.;

(D) the individual has been diagnosed with one of the medical conditions specified by the Board that qualifies him/her for Health Pool coverage; or

(E) evidence that the individual has maintained health coverage for the previous 18 months with no gap in coverage greater than 63 days, with the most recent health coverage through an employer-sponsored plan, government plan, or church plan.

(4) a statement that the individual should contact the Health Pool for additional information regarding eligibility, coverages, cost, limitations, exclusions, and termination provisions;

(5) in bold print the full name, address, and telephone numbers of the Health Pool as shown in the Form Health Pool Notice referenced in §21.2305 of this title and as subsequently updated.

(c) If a health benefit plan issuer provides a notice of Health Pool availability to its covered individuals pursuant to §21.2303(c) of this title, the health benefit plan issuer may use the Form Health Pool Notice referenced in §21.2305 of this title, or a substantially similar notice as outlined in subsection (b) of this section, provided the health benefit plan issuer includes the provisions of paragraphs (1) and (2) of this subsection in either the Form Health Pool Notice or the substantially similar notice:

(1) a statement that the premium rates for Health Pool coverage are:

(A) based on the standard rates for substantially similar health coverage; and

(B) are subject to change based on:

(i) changes to the standard rates for substantially similar health coverage; and

(ii) the Health Pool's claims experience; and

(2) a statement that health coverage which may qualify a covered individual for Health Pool coverage does not include accident,

dental-only, vision-only, fixed indemnity, credit insurance or other limited coverage including specified disease, long-term care or disability income coverage, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, Medicare supplement or Medicare Select coverage, or coverage by Medicare, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(d) The notice shall be in no less than 10 point type.

§21.2306. Compliance and Effective Date.

The amendments to §21.2303(a) of this title (relating to Delivery of Notice), and §21.2304(b)(3) of this title (relating to Notice) apply to any application for health coverage received, processed, or acted upon by a health benefit plan issuer on or after January 1, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603619
Brenda Caldwell
Assistant General Counsel
Texas Department of Insurance
Effective date: July 26, 2006
Proposal publication date: May 5, 2006
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§308.1 - 308.3

The Texas Emergency Services Retirement System State Board of Trustees adopts amended rules 34 Texas Administrative Code Chapter 308, §§308.1 - 308.3 governing benefits from the Texas Emergency Services Retirement System. The Board adopted §308.1 and §308.2 without changes. The Board adopted §308.3 with a non-substantive change from the proposed version. The rules changes were adopted by the Board on May 16, 2006. The amended rules were proposed for public comment in the March 31, 2006, issue of *Texas Register* (31 TexReg 2835).

The amended rules reduce benefits for volunteer fire fighters and EMS personnel in departments that participate in the System. The Board reduced benefits to improve the long-term actuarial soundness of the System. The amendment to §308.1 eliminates partial vesting for active members with less than 10 years of qualified service. The amendment to §308.2 reduces the benefit formula compound interest rate from 7% to 6.2% for all years of qualified service over 15 years. The amendment to §308.2 provides a procedure for initiating and terminating benefits. The amendment to §308.3 clarifies the amount of disability payments.

The amendment to §308.1(c) "grandfathers" active member's vested accrued benefits for retirement, termination, or death as of December 31, 2006. The System will calculate the amount of every vested member's vested accrued benefit as of December 31, 2006 and keep a record of this amount as each person's minimum benefit. Upon termination, death, or retirement, the System will pay the larger of the benefits under the new reduced benefit formula and the minimum benefit. Vested terminated members at the effective date of the changes would not be affected by the rule amendment.

The Board adopted §308.1 and §308.2 without changes. The Board adopted §308.3 with changes from the published version. The Board amended §308.3(a) by substituting the words "above $12" for the words "made since participation began". Changes in the adopted rule reflect a non-substantive variation from the proposed rule. The changes affect no new persons, entities or subjects other than those given notice and that compliance with the adopted sections will not be more burdensome than under the proposed section. Accordingly, republication of the adopted sections, as proposed amendments is not required.

The Windcrest VFD Pension Board submitted written comments in opposition to the benefit reductions proposed in §308.1 and §308.2. The Board received comments from the West Columbia Fire Department in opposition to the proposed changes to §308.1, §308.2 and §308.3. Paul Richard filed written comments in opposition to the proposed benefit reductions to fire fighters with over 15 years of service. The membership of the Schulenburg Fire Department voted in opposition to reductions to the compounding of benefits for service over 15 years and voted in support of longer vesting periods. The State Board does not disagree with the comments made in opposition to the benefit reductions. The Board reduced benefits to improve the long-term actuarial soundness of the system.

The amended rules are adopted under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System. No other statutes, articles, or codes are affected by the rule amendment.

§308.3 Disability Retirement Annuity.

(a) Except as otherwise provided by §864.004 and §865.006, Government Code, and this section, a member whose disability results from performing emergency service duties is entitled to a monthly annuity during the period of the disability in an amount equal to $300 plus $50 for every $12 increase in contributions above $12 by the governing body for which the person was performing emergency service duties at the time of the disability.

(b) An increase in contributions by a governing body after the payment of a monthly annuity begins does not increase the amount of the annuity.

(c) Disability benefits are prorated for portions of months during which a person is disabled.

(d) A local board shall report to the commissioner, in a manner provided by the pension system, a determination of temporary disability not later than the 45th day after the date the disability begins.

(e) A person receiving temporary disability benefits who does not apply to the Social Security Administration for certification as permanently disabled before the second anniversary of the date of determination of temporary disability or, if the person does not participate in the social security program, to a medical board selected by the state board for alternative certification is subject to termination of disability benefit payments if the person is not certified by the Social Secu-

rity Administration or the medical board within the period provided by §864.004, Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603631
Lisa Ivie Miller
Commissioner
Office of the Fire Fighters' Pension Commissioner
Effective date: July 26, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 936-3470

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CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§310.5, 310.6, 310.8

The State Board of Trustees of the Texas Emergency Services Retirement System adopts amended rules 34 Texas Administrative Code Chapter 310, §§310.5, 310.6, and 310.8 governing administration of the Texas Emergency Services Retirement System (System). The Board adopted the rules amendment on May 16, 2006 without changes. The adopted rule amendments are effective September 1, 2006. The amended rules were proposed for public comment in the March 31, 2006, issue of *Texas Register* (31 TexReg 2836).

The adopted amendment to §310.6 increases minimum pension contribution rates by $4 per month per member in each of the years following September 1, 2006. This is the first increase in the statewide minimum pension contribution rate since the pension fund was created in 1977. The current minimum contribution rate is $12 per member per month, and this minimum rate has lost over two-thirds of its purchasing power to inflation since 1977.

The adoption of the higher contribution rates will allow the System to provide qualified firefighters and emergency services personnel with higher pension, disability, and death benefits. The public benefit anticipated as a result of the adoption of the new rules will be to provide participating departments with improved benefits to recruit volunteer fire fighters and emergency services personnel to protect local communities.

The adopted amendment to §310.8 establishes the Automated Clearing House (ACH) legal framework of rules and procedures as the preferred method of electronic payment of pension contributions.

The Board received comments from the West Columbia Fire Department and the Schulenburg Fire Department in support of the proposed amendment increasing contribution rates.

The rule amendment is adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System. No other statutes, articles, or codes are affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 2006.

TRD-200603630
Lisa Ivie Miller
Commissioner
Office of the Fire Fighters' Pension Commissioner
Effective date: September 1, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 936-3470

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) files this Notice of Intention to Review Title 4, Texas Administrative Code, Part 1, Chapter 29, Subchapter A, concerning Rural Economic Development Program, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review each of their rules every four years and consider the rules under review for readoption, revision or repeal. The review must include an assessment of whether the original justification for the rules continues to exist.

The assessment of Title 4, Part 1, Chapter 29, Subchapter A, by the department at this time indicates that the original justification for the rules continues to exist and the department is proposing to readopt all sections in Chapter 29, Subchapter A, without changes.

Comments on the review of Chapter 29, Subchapter A, may be submitted to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78701, and must be received by the department within 30 days of the publication of this notice in the *Texas Register*.

TRD-200603658
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 10, 2006

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 51 concerning Award of the Board. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§51.10. Joint Payment of Award.

§51.15. Periodic Installments.

§51.20. Lump Sum Payment.

§51.25. Request for Review.

§51.30. Review of Award.

§51.50. Payments of Attorney Fees.

§51.65. Attorney Fees.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 21, 2006, and submitted to Kristi Dowding, Legal and Compliance, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200603708
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 12, 2006

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The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 61 concerning Prehearing Conferences. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§61.5. Request for Prehearing Conference.

§61.7. Request of Prehearing Conference.

§61.15. Setting under Texas Civil Statutes, Article 8306, §18a.

§61.20. Setting on Hardship.

§61.25. Setting at Carrier's Request.

§61.30. Filing of Medical Information.

§61.35. Exchange of Medical Information.

§61.40. Additional Medical.

§61.45. Charges for Reports.

§61.50. Representatives Must Be Qualified.

§61.55. Supply of Forms.

§61.60. Attendance at Conference.

§61.65. Request for Cancellation of Prehearing Conference.

§61.70. Maintain Setting.

§61.75. Failure To Appear.

§61.80. Preparation at Conference.

§61.85. Carrier Self-Audit of Prehearing Conference.

§61.90. Conduct at Prehearing Conference.

§61.95. Consular Officers.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on August 21, 2006, and submitted to Kristi Dowding, Legal and Compliance, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200603709
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 12, 2006

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas files this notice of intent to review and re-adopt all rules in 16 Texas Administrative Code (TAC) Chapter 4, relating to Environmental Protection, in accordance with Texas Government Code, §2001.039. The Commission's reasons for adopting these rules continue to exist. Through the rules in Chapter 4, Subchapter D, the Commission has established and the Oil and Gas Division administers the voluntary cleanup program. The purpose of this program is to provide an incentive to clean up property contaminated by activities under Commission jurisdiction by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the site. The program is restricted to voluntary actions but does not replace other voluntary actions. Through the rules in Chapter 4, Subchapter F, the Commission has established requirements for the identification of equipment contaminated with oil and gas Naturally Occurring Radioactive Material (NORM), and the disposal of oil and gas NORM waste for the purpose of protecting public health, safety, and the environment.

In a separate, currently pending rulemaking, the Commission has proposed new rules §§4.201-4.226, in new Subchapter B of Chapter 4, in response to a petition for rulemaking concerning commercial recycling facilities and based on its experience with permitting such facilities over the past several years. The proposal was published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4543) for a 30 day comment period.

Comments on the notice of intent to review all rules in 16 TAC Chapter 4 may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline; the Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas on July 6, 2006.

TRD-200603621
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: July 6, 2006

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The Railroad Commission of Texas files this notice of intent to review and re-adopt all rules in 16 Texas Administrative Code (TAC) Chapter 7, relating to Gas Services Division, in accordance with Texas Government Code, §2001.039. The Commission's reasons for adopting these rules continue to exist. Through the rules in Chapter 7, the Commission administers the regulatory statutes pertaining to gas utilities. Subchapter B includes the minimum service standards for gas utility service to residential and small commercial customers in unincorporated areas; requirements for communication by gas utilities with members or employees of the Commission; procedures and requirements for filing documents; and minimum content and notice requirements for statements of intent and petitions for review of municipal action. Subchapter C contains the rules for gas utilities' filing of records, annual reports, and tariffs, and for administration of the gas utility tax. Subchapter D contains the rules for customer service and protection, including rules governing gas distribution in mobile home parks, apartment houses, and apartment units; curtailment standards; suspension of gas utility service disconnection during an extreme weather emergency; and abandonment. In Subchapter E, the Commission's has adopted rules for rates and rate-setting procedures, including standards for including certain investments and expenses in the costs of a gas utility for rate-setting purposes. Subchapter G contains the code of conduct rule, which specifies standards of conduct governing the provision of gas transportation services, for the purpose of preventing discrimination. Subchapter H contains the rule prescribing the procedures and standards for gas utility interim rate adjustments. Finally, Subchapter I contains the rule that created the natural gas pipeline competition study advisory committee, created to give the Commission the benefit of the members' collective business, technical, and operating expertise and experience to help the Commission review competition in the Texas intrastate natural gas pipeline industry, assess the effect of current statutes and rules on competition, and develop recommendations for changes to statutes or rules that may be necessary, in conformance with Article VI, Railroad Commission, Section 16, Appropriations Act, 2006-2007 Biennium, 79th Legislature, Regular Session, 2005.

Comments on the notice of intent to review all rules in 16 TAC Chapter 7 may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline; the Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Jackie Standard at (512) 463-7118. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas on July 6, 2006.

TRD-200603622
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: July 6, 2006

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The Railroad Commission of Texas files this notice of intent to review and re-adopt all rules in 16 Texas Administrative Code (TAC) Chapter 15, relating to Alternative Fuels Research and Education Division, in accordance with Texas Government Code, §2001.039. The Commission's reasons for adopting these rules continue to exist. Through the rules in Chapter 15, the Alternative Fuels Research and Education Division (AFRED) of the Commission administers the Alternative Fuels Research and Education program pursuant to Texas Natural Resources Code, §§113.241, *et seq*. The rules establish when the obligation to pay a delivery fee is imposed; which persons are responsible for paying the fee; which persons are responsible for reporting, collecting and remitting fees to the commission; and the amount of fees due, based on net volume of odorized LPG imported or delivered into any means of conveyance to be sold and placed into commerce. In addition, through the rules in Chapter 15, AFRED administers for purchasers of eligible LPG appliances and equipment a consumer rebate program that achieves energy conservation and efficiency or improves the quality of air in this state; administers for Texas retail propane dealers a media rebate program that achieves increased public awareness and assists in the marketing of propane as an environmentally beneficial alternative fuel; administers for Texas retail propane and natural gas motor fuel outlets an alternative fuel highway signage rebate program that achieves increased public awareness and convenience in the use of propane and natural gas as motor fuels; and administers a manufactured housing incentive program that increases public awareness and assists in the marketing of propane as an environmentally beneficial alternative fuel.

In a separate rulemaking, the Commission intends to propose an amendment to §15.30, relating to Propane Alternative Fuels Advisory Committee, to extend the sunset date for the committee beyond the current abolishment date of October 31, 2006. This proposed amendment will be filed with the *Texas Register* at a later date. The purpose of the committee is to give the Commission the benefit of the members' collective business, environmental, and technical expertise and experience to help the Commission increase the use of propane, improve air quality, and develop the economy of this state. The committee's sole duty is to advise the commission. The committee has no executive or administrative powers or duties with respect to the operation of AFRED; all such powers and duties rest solely with the Commission.

Comments on the notice of intent to review all rules in 16 TAC Chapter 15 may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline; the Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Dan Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas on July 6, 2006.

TRD-200603623
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: July 6, 2006

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Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice readopts Title 37, Part 6, Chapter 153, Subchapter B, §153.20, concerning Private Real Property Rights Affected by Governmental Action. The proposed rule review was published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 3063).

The purpose of the rule is to establish procedures whereby the agency determines if private real property rights are affected by governmental action taken by the Texas Department of Criminal Justice.

No comments were received regarding the rule review.

The rule is readopted under Texas Government Code, Chapter 2007.

Cross Reference to Statutes: Texas Government Code, Chapter 2007.

TRD-200603690
Melinda H. Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: July 11, 2006

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The Texas Board of Criminal Justice readopts Title 37, Part 6, Chapter 195, §§195.71 - 195.78, concerning Testing for Controlled Substances. The proposed rule review was published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 3063).

The purpose of the rules are to establish procedures for the controlled substance testing of offenders under parole or mandatory supervision.

No comments were received regarding the review of the rules.

The rules are readopted under Texas Government Code, §508.184.

Cross Reference to Statutes: Texas Government Code, §508.221.

TRD-200603691
Melinda H. Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: July 11, 2006

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §595.6(f)

NOTICE OF PEST CONTROL TREATMENT

Date(s) of planned treatment _____

Re-entry (if applicable) _____

Extenuating circumstances may require unplanned treatments. To confirm treatment dates, please call the contact listed below.

For more information call or contact:

_____

_____

National Pesticide Information Center

1-800-858-7378

A Consumer Information Sheet may be obtained from the management.

Pest Control applicators are licensed by the Texas Structural Pest Control Board, P.O. Box 1927, Austin, Texas 78767-1927. (512) 305-8250.

Figure: 22 TAC §595.7(h)

CONSUMER INFORMATION SHEET

The structural pest control industry is regulated by the Texas Structural Pest Control Board located at P.O. Box 1927, Austin, Texas 78767-1927. The Board licenses the businesses, certified applicators and technicians who perform structural pest control work. Certified applicators and technicians must pass a written examination in order to receive their licenses.

Pesticides must be registered with the United States Environmental Protection Agency and the Texas Department of Agriculture before they may be used in Texas. Environmental Protection Agency registration is not a finding of product safety. Pesticides are designed to kill or control pests. Your risk of harm depends upon the degree of your exposure and your individual susceptibility.

Specific health and safety information varies between pesticides and types of exposures and is available on the label information or MSDS sheet which can be supplied to you upon request from the licensed applicator. Take precautions when a treatment has been performed to avoid exposure to vulnerable individuals. Pesticides may be harmful if swallowed, inhaled, or absorbed through the skin. Avoid breathing dust or spray mist and any unnecessary contact with treated surfaces. If you desire specific information on precautions, refer to the pesticide label. The law requires that the application procedures specified on the label be followed.

If you have questions about the application, contact the business or person making the application. If you suspect a violation of the law regarding structural pest control, contact the Structural Pest Control Board. In case of a health emergency, seek immediate medical attention.

Pest Control signs must be posted prior to treatment in many instances. The signs should be posted in an area of common access at least 48 hours prior to treatment. The information sign will allow you to contact someone who can tell you what pesticide is being used.

If you are contracting for pest control services due to a home solicitation, you have the right to cancel the contract within 72 hours. You may exercise this right by notifying the pest control company that you do not wish to receive their service.

For general information on pesticides contact the National Pesticide Information Network at 1-800-858-7378.

For information concerning structural pest control laws, contact the Texas Structural Pest Control Board at (512) 305-8250.

For information concerning the formulation and registration of pesticides, contact the Texas Department of Agriculture at (512) 463-7476.

For non-emergency health information relating to pesticides, contact Texas Department of State Health Services (512) 458-7111.

REDUCED IMPACT SERVICE

In order to minimize the reliance on pesticides and reduce pest populations, a Reduced Impact Pest Control operator may recommend that you consider the sanitation or physical alteration of your work place or residence. It is your responsibility to follow those recommendations. Your pest control operator may or may not offer these services upon request. A proper inspection will provide the information necessary for you to choose the method of pest control which best suits your situation. Many pest problems can be solved without using pesticides.

This Reduced Impact Service will include an inspection report and treatment recommendations. You should review these and keep a copy for your records. Your cooperation in following the recommendations made by your service provider is essential to a reduced impact service program.

Pesticides may be used in a responsible and professional manner in a reduced impact pest control service. If you do not want a specific pesticide used or any pesticides used at all, you must note this in writing on the contract prior to the initiation of the service. If any specific pesticide or class of pesticides are not excluded, it may be used by the provider.

REQUIRED BY THE TEXAS STRUCTURAL PEST CONTROL BOARD

Figure: 22 TAC §595.7(j)

CONSUMER INFORMATION SHEET

LAWN & ORNAMENTAL INSECT CONTROL

(REQUIRED BY THE TEXAS STRUCTURAL PEST CONTROL BOARD)

Pesticides must be registered with the United States Environmental Protection Agency and the Texas Department of Agriculture before they may be used in Texas.

EPA registration is not a finding of product safety. Pesticides are designed to control and repel pests. Your risk of harm depends upon the degree of your exposure to a particular pesticide and your individual susceptibility. Specific health and safety information varies between pesticides and types of exposures and is available on the label information or MSDS sheet (usually only refers to the undiluted products) which can be supplied to you upon request from the licensed applicator. Take normal precautions when a treatment has been performed. Pesticides may be harmful if swallowed, inhaled, or absorbed through the skin. Avoid breathing dust or spray mist and any unnecessary contact with treated surfaces. If you desire specific information on precautions, refer to the pesticide label. The law requires that the application procedures specified on the label be followed.

In order to minimize the reliance on pesticides and reduce pest populations, you may wish to consider Integrated Pest Management (IPM). IPM methods to control pests (including weeds) take advantage of all pest management options, including but not limited to the judicious use of pesticides and non-chemical methods. An IPM program is one designed to create a healthy lawn and/or landscape with sufficient plant strength and density to survive weed, insect, and disease attacks with minimum pesticide use. An IPM program must consider your lawn or landscape's specific needs and overall condition. An IPM program requires the support proper cultural practices. IPM uses the best mix of techniques, which can include cultural methods, the use of beneficial insects, biological and discreet use of control products. Your lawn and landscape operator may offer these services upon request. A proper inspection should provide the necessary information to choose the method of pest control which best suits your situation.

If you have questions about the applications, contact the business or person making the application. If you suspect a violation of the law regarding structural pest control, contact the Texas Structural Pest Control Board. The structural pest control industry is regulated by the Texas Structural Pest Control Board located at P.O. Box 1927, Austin, Texas 78767-1927. The Board licenses the businesses, certified applicator and technicians who perform structural pest control work, including lawn and landscape. If a commercial service is used, all work is supervised by a licensed certified commercial applicator. Otherwise a certified noncommercial applicator must perform the service. Certified applicators and technicians must pass a written examination in order to receive their licenses.

If you are contracting for pest control services due to a home solicitation, you have the right to cancel the contract within 72 hours. You may exercise this right by notifying the pest control company, prior to receiving service, that you do not wish to receive their service.

For general information on the chemical or health properties of pesticides, you may contact the National Pesticide Information Network at 1-800-858-7378. This hotline is a national service supported by funding from the U.S. Environmental Protection Agency.

For information concerning structural pest control laws, contact the Texas Structural Pest Control Board at (512) 305-8250.

For information concerning the formulation and registration of pesticides, contact the Texas Department of Agriculture at (512) 463-7476.

For non-emergency health information relating to pesticides, contact the Texas Department of State Health Services at (512) 458-7111.

In case of a health emergency, seek immediate medical attention.

Figure: 22 TAC §595.14(f)

CONSUMER INFORMATION SHEET

REDUCED IMPACT SERVICES (RIS)

LAWN & ORNAMENTAL INSECT CONTROL

(REQUIRED BY THE TEXAS STRUCTURAL PEST CONTROL BOARD)

Your lawn care pest control operator is designated as a Reduced Impact Pest Control operator by the Texas Structural Pest Control Board and has completed training required to qualify for this designation. The goal of Reduced Impact Service is to manage your pest problems while reducing pesticide exposure to people, property and the environment. This service encourages the use of Integrated Pest Management (IPM) methods to control pests (weeds) and take advantage of all pest management options, including but not limited to the judicious use of pesticides and non-chemical methods.

An IPM program is one designed to create a healthy lawn and/or landscape with sufficient plant strength and density to survive weed, insect and disease attacks with minimum pesticide use. An IPM program must consider your lawn and landscape needs and overall condition. An IPM program requires the support of proper cultural practices including consideration of the following: Proper mowing practices, regular watering at a rate that ensures retained moisture levels through out the root zone, core aeration to promote root development and reduced soil compaction, programmed seeding, sodding, plugging, or sprigging to enhance lawn density and to enhance appearance by controlling incursions of undesirable grasses and weeds, soil testing, and fertilization to provide essential nutrients which may be deficient in your lawn. PH balancing treatments (lime and sulfur) to achieve proper soil acidity levels and improve nutrient absorption. Regular inspection of lawn areas for early detection of pest presence is essential to IPM.

Integrated Pest Management (IPM) is using the best mix of cultural techniques, use of beneficial insects, biological controls, and discreet use of control products. A customer's cooperation in mowing, watering, and regular inspections for early detection between our service visits is important to the success of the IPM care of your property.

To minimize the reliance on pesticides and reduce pest populations, your Reduced Impact Pest Control operator may recommend that you consider cultural practices like changing the varieties of your turf and/or ornamentals. Proper mowing, aeration, watering, or pruning can affect the health of the turf or plant. Your lawn and ornamental operator may offer these services upon request. A proper inspection will provide the information necessary for you to choose the method of pest control which best suits your situation. Your acceptance of a certain percentage of weed or insect damage can effect to what degree most pesticides are used.

This Reduced Impact Service will include an inspection report and treatment recommendations. You should review these before authorizing treatment, and keep a copy for your records. Your cooperation in following the recommendations made by your service provider is essential to an effective reduced impact service program.

Pesticides may be used in a responsible and professional manner in a Reduced Impact Service. If you do not want a specific pesticide used or any pesticides use, you must note this in writing prior to the initiation of the service.

THE FOLLOWING INFORMATION APPLIES TO YOU----WHETHER OR NOT YOU SELECT REDUCED IMPACT SERVICE:

Pesticides must be registered with the United States Environmental Protection Agency, and the Texas Department of Agriculture before they may be used in Texas.

If you have any questions about the application, contact the certified applicator. If you suspect a violation of the law regarding structural pest control, contact the Texas Structural Pest Control Board.

If you are contracting for pest control services due to a home solicitation, you have the right to cancel the contract within 72 hours. You may exercise this right by notifying the pest control company, prior to receiving service, that you do not wish to receive their service.

For general information on the chemical or health properties of pesticides you may contact the National Pesticide Information Center at 1-800-858-7378. This hotline is a national service supported by funding from the U.S. Environmental Protection Agency. For information concerning structural pest control laws, contact the Texas Structural Pest Control Board at (512) 305-8250. For information concerning the formulation and registration of pesticides, contact the Texas Department of Agriculture at (512) 463-7476.

For non-emergency health information relating to pesticides, contact the Texas Department of State Health Services at (512) 458-7111.

In case of a health emergency seek immediate medical attention.

Figure: 25 TAC §97.221

TEXAS Department of State Health Services

Department of State Health Services Immunization Schedule - 2006

Vaccine ▼ Age ▶	Birth	1 month	2 months	4 months	6 months	12 months	15 months	18 months	24 months	4–6 years	11–12 years	13–14 years	15 years	16–18 years
Hepatitis B[1]	HepB	HepB		*HepB*[1]	HepB				HepB Series					
Diphtheria, Tetanus, Pertussis[2]			DTaP	DTaP	DTaP		DTaP			DTaP	Tdap	Tdap		
Haemophilus influenzae type b[3]			Hib	Hib	*Hib*[3]	Hib								
Inactivated Poliovirus			IPV	IPV	IPV					IPV				
Measles, Mumps, Rubella[4]						MMR				MMR	MMR			
Varicella[5]						Varicella			Varicella					
Meningococcal[6]							Vaccines within broken line are for selected populations		MPSV4		MCV4	MCV4	MCV4	
Pneumococcal[7]			PCV	PCV	PCV	PCV			PCV		PPV			
Influenza[8]					Influenza (Yearly)				Influenza (Yearly)					
Hepatitis A[9]						HepA Series								

This schedule indicates the recommended ages for routine administration of currently licensed childhood vaccines for children through age 18 years. Any dose not given at the recommended age should be given at any subsequent visit when indicated and feasible. Indicates age groups that warrant special effort to administer those vaccines not previously given.

Department of State Health Services Immunization Schedule

1. **Hepatitis B (HepB) vaccine.** ***AT*** **BIRTH: All newborns** should receive monovalent HepB soon after birth and before hospital discharge.
Infants born to mothers who are HBsAg-positive should receive HepB and 0.5 mL of hepatitis B immune globulin (HBIG) within 12 hours of birth.
Infants born to mothers whose HBsAg status is unknown should receive HepB within 12 hours of birth. The mother should have blood drawn as soon as possible to determine her HBsAg status; if HBsAg-positive, the infant should receive HBIG as soon as possible (no later than age 1 week).
For infants born to HBsAg-negative mothers, the birth dose can be delayed in rare circumstances but only if a physician's order to withhold the vaccine and a copy of the mother's original HBsAg-negative laboratory report are documented in the infant's medical record.
FOLLOWING THE BIRTH DOSE: The HepB series should be completed with either monovalent HepB or a combination vaccine containing HepB. The second dose should be administered at age 1-2 months. The final dose should be administered at age ≥ 24 weeks. It is permissible to administer 4 doses of HepB (e.g., when combination vaccines are given after the birth dose); however, if monovalent HepB is used, a dose at age 4 months is not needed.
Infants born to HBsAg-positive mothers should be tested for HBsAg and antibody to HBsAg after completion of the HepB series, at age 9-18 months (generally at the next well-child visit after completion of the vaccine series).

2. **Diphtheria and tetanus toxoids and acellular pertussis (DTaP) vaccine.** The fourth dose of DTaP may be administered as early as age 12 months, provided 6 months have elapsed since the third dose and the child is unlikely to return at age 15 to 18 months. The final dose in the series should be given at age ≥ 4 years.
Tetanus and diphtheria toxoids and acellular pertussis vaccine (Tdap – adolescent preparation) is recommended at age 11-12 years for those who have completed the recommended childhood DTP/DTaP vaccination series and have not received a Td booster dose. Adolescents 13-18 years who missed the 11-12 year Td/Tdap booster dose should also receive a single dose of Tdap if they have completed the recommended childhood DTP/DTaP vaccination series. Subsequent **tetanus and diphtheria toxoids (Td)** are recommended every 10 years.

3. **Haemophilus influenzae type b (Hib) conjugate vaccine.** Three Hib conjugate vaccines are licensed for infant use. If PRP-OMP (PedvaxHIB® or ComVax® [Merck]) is administered at ages 2 and 4 months, a dose at age 6 months is not required. DTaP/Hib combination products should not be used for primary immunization in infants at ages 2, 4 or 6 months but can be used as boosters following any Hib vaccine. The final dose in the series should be given at age ≥12 months.

4. **Measles, mumps, and rubella vaccine (MMR).** The second dose of MMR is recommended routinely at age 4-6 years but may be administered during any visit, provided at least 4 weeks have elapsed since the first dose and both doses are administered beginning at or after age 12 months. Those who have not previously received the second dose should complete the schedule by age 11-12 years.

5. **Varicella vaccine.** Varicella vaccine is recommended at any visit at or after age 12 months for susceptible children (i.e., those who lack a reliable history of chickenpox). Susceptible persons age ≥13 years should receive 2 doses, given at least 4 weeks apart.

6. **Meningococcal vaccine (MCV4).** Meningococcal conjugate vaccine (MCV4) should be given to all children at the 11-12 year old visit as well as to unvaccinated adolescents at high school entry (15 years of age). Other adolescents who wish to decrease their risk for meningococcal disease may also be vaccinated. All college freshmen living in dormitories should also be vaccinated, preferably with MCV4, although **meningococcal polysaccharide vaccine (MPSV4)** is an accepted alternative. Vaccination against invasive meningococcal disease is recommended for children and adolescents aged ≥ 2 years with terminal complement deficiencies or anatomic or functional asplenia and certain other high risk groups (see *MMWR* 2005; 54 [RR-7]:1-21); use MPSV4 for children aged 2-10 years and MCV4 for older children, although MPSV4 is an acceptable alternative. **(Not required for school/child-care/students enrolled in health-related and veterinary courses in institutions of higher education).**

7. **Pneumococcal vaccine.** The **heptavalent pneumococcal conjugate vaccine (PCV)** is recommended for all children age 2-23 months and for certain children aged 24-59 months. The final dose in the series should be given at age ≥ 12 months. **Pneumococcal polysaccharide vaccine (PPV)** is recommended in addition to PCV for certain high-risk groups. See *MMWR* 2000; 49(RR-9):1-35. **(Not required for school entry)**

8. **Influenza vaccine.** Influenza vaccine is recommended annually for children aged ≥ 6 months with certain risk factors (including but not limited to, asthma, cardiac disease, sickle cell disease, human immunodeficiency virus infection [HIV], diabetes, and conditions that can compromise respiratory function or handling of respiratory secretions or that can increase the risk for aspiration), healthcare workers, and other persons (including household members) in close contact with persons in groups at high risk (see *MMWR* 2006; 54[RR-8]:1-55). In addition, healthy children aged 6-23 months and close contacts of healthy children aged 0-5 months are recommended to receive influenza vaccine because children in this age group are at substantially increased risk for influenza-related hospitalizations. For healthy persons aged 5-49 years, the intranasally administered, live, attenuated influenza vaccine (LAIV) is an acceptable alternative to the intramuscular trivalent inactivated influenza vaccine (TIV). See *MMWR* 2006;54(RR-8):1-55. Children receiving TIV should be administered a dose appropriate for their age (0.25 mL if aged 6–35 months or 0.5 mL if aged ≥ 3 years). Children aged ≤ 8 years who are receiving influenza vaccine for the first time should receive 2 doses (separated by at least 4 weeks for TIV and at least 6 weeks for LAIV). **(Not required for school/child-care entry)**

9. **Hepatitis A vaccine (HepA).** HepA is recommended for children at 1 year of age (i.e., 12-23 months). In Texas, children and adolescents who have not been immunized against hepatitis A can begin the hepatitis A immunization series during any visit. **(Required** for children attending **child-care at age** 2. ***Beginning January 1, 2007***, children will be required to have two doses of hepatitis A, or have begun the series, at 12 months of age. The second dose may be administered 6-18 months from the first dose. **Required for students, in grades K-3, attending a school in one of the 40 designated counties only.)**

Informed by recommendations of the 2006 Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP), and adopted by the Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. (800) 252-9152. The above information is available at www.ImmunizeTexas.com.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:00 p.m. on August 10, 2006 at 1005 Congress Avenue, Suite B10 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to (i) its professional educators home loan programs (the "Professional Educators Project") and (ii) its fire fighter and law enforcement or security officer home loan programs (the "Fire Fighter and Law Enforcement or Security Officer Project"). The maximum aggregate face amount of the Bonds to be issued with respect to the Professional Educators Project is $100,000,000 and the maximum aggregate face amount of the Bonds to be issued with respect to the Fire Fighter and Law Enforcement or Security Officer Project is $25,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Professional Educators Project and the Fire Fighter and Law Enforcement or Security Officer Project and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to David Long at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 402.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Smith, ADA Responsible Employee, at 1-888-638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Long at dlong@tsahc.org.

TRD-200603713
David Long
President
Texas State Affordable Housing Corporation
Filed: July 12, 2006

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Office of the Attorney General

Texas Clean Air Act Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Before the State may settle a judicial enforcement action under this statute, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed judgment if the comments disclose facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statute.

Case Title and Court: *Harris County and State of Texas v. Deer Park Refining Limited Partnership, Shell Oil Products Company, LLC, Shell Chemical LP, and Shell Oil Company*, No. 2004-08107 in the 281st District Court of Harris County, Texas.

Nature of Defendants' Operations: Defendants operate an integrated refining, petrochemical and lubricating oil facility in the 5900 block of Highway 225 East in Deer Park, Harris County, Texas.

Proposed Agreed Judgment: The judgment contains an injunction requiring defendants to install and maintain in place at the refinery an environmental management system that conforms to a certain ISO standard until otherwise instructed by Harris County, but in any event, for at least five years. The judgment also requires that defendants pay civil penalties of $100,000 to be divided equally between Harris County and the State, and attorney's fees of $2,850 to Harris County and $1,000 to the Office of the Attorney General.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200603669
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: July 10, 2006

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Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Banking, announces the issuance of Request for Proposals (RFP) #303-7-10023. TBPC seeks a 5-year lease of approximately 2,791 square feet of office space in the Round Rock area, Williamson County, Texas.

The deadline for questions is July 21, 2006; and the deadline for proposals is August 3, 2006 at 3:00 P.M. The award date is September 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither

this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=65862.

TRD-200603644
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: July 7, 2006

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Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Banking, announces the issuance of Request for Proposals (RFP) #303-7-10024. TBPC seeks a 5-year lease of approximately 2,830 square feet of office space in the San Antonio area, Bexar County, Texas.

The deadline for questions is July 21, 2006; and the deadline for proposals is August 4, 2006 at 3:00 P.M. The award date is September 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=65863.

TRD-200603645
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: July 7, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 30, 2006, through July 6, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 12, 2006. The public comment period for these projects will close at 5:00 p.m. on August 11, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Brigham Oil and Gas LP; Location: The project is located on Palacios Point, approximately 8 miles south of Palacios, in Matagorda County, Texas. Drill Pad 1 is in uplands and can be located on the U.S.G.S. quadrangle map titled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 772351; Northing: 3165588. Drill Pad 2 will fill 1.02 acres of jurisdictional wetlands and can be located on the U.S.G.S. quadrangle map titled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 773474; Northing: 3166584. Drill Pad 3 is in uplands and can be located on the U.S.G.S. quadrangle map titled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 773733; Northing: 3165832. Drill Pad 4 will fill 1.02 acres of jurisdictional wetlands and can be located on the U.S.G.S. quadrangle map titled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 774978; Northing: 3167026. Drill Pad 5 will fill 2.8 acres of jurisdictional wetlands and can be located on the U.S.G.S. quadrangle map titled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 773891; Northing: 3165213. The mitigation area to be preserved can be located on the U.S.G.S. quadrangle map titled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 772844; Northing: 3167722. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include the installation of typical drill pads in 4 separate locations with attendant facilities, and flowlines. This includes the placement of fill material into 4.84 acres of jurisdictional wetlands for the drill pads and an additional 3.5 acres of jurisdictional wetlands for the construction of access roads to the drill pads. The applicant is proposing to drill multiple wells on each drill pad. Multiple drilling locations are necessary due to complex geologically distinct fault blocks within the target zone. Directional drilling techniques will be employed to test shallow and deep reservoir objectives. The applicant proposes to mitigate for the permanent filling of 8.34 acres of jurisdictional wetlands/waters by preserving 40 acres of tidal marsh by permanent deed restriction. CCC Project No.: 06-0320-F1; Type of Application: U.S.A.C.E. permit application #24079 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Brigham Oil and Gas LP; Location: The project is located in Matagorda Bay within State Tracts (ST's) 227, 228, 238, 239, 240, 278, 285, 295, 296, 303, 308, and 309 within Matagorda and Calhoun Counties, Texas. ST 227 can be located on the U.S.G.S. quadrangle map titled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 770694; Northing: 3164115. ST 228 can be located on the U.S.G.S. quadrangle map titled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 772756; Northing: 3164074. ST 238 can be located on the U.S.G.S. quadrangle map entitled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 774138; Northing: 3164196. ST 239 can be located on the U.S.G.S. quadrangle map entitled: Carancahua Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 774453; Northing: 3165151. ST 240 can be located on the U.S.G.S. quadrangle map entitled: Palacios Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 775845; Northing: 3165324. ST 278 can be located on the U.S.G.S. quadrangle map titled: Olivia, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 756360; Northing: 3171063. ST 285 can be located on the U.S.G.S. quadrangle map entitled: Turtle Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 757224;

Northing: 3171073. ST 295 can be located on the U.S.G.S. quadrangle map entitled: Carancahua Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 765473; Northing: 3167456. ST 296 can be located on the U.S.G.S. quadrangle map entitled: Carancahua Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 765453; Northing: 3168472. ST 303 can be located on the U.S.G.S. quadrangle map entitled: Carancahua Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 768298; Northing: 3168980. ST 307 can be located on the U.S.G.S. quadrangle map entitled: Carancahua Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 769354; Northing: 3166744. ST 308 can be located on the U.S.G.S. quadrangle map entitled: Carancahua Pass, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 770340; Northing: 3169000. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. Each proposed action under this oil field development permit requires specific project review and authorization. Such activities include the dredging of access channels, installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. CCC Project No.: 06-0321-F1; Type of Application: U.S.A.C.E. permit application #24215 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Apache Corporation; Location: The project is located in the Gulf of Mexico, in federal waters, in Sabine Pass Area Blocks 17 and 10, offshore, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur, Texas. Approximate UTM Coordinates in NAD 27 (meters) of the Caisson No. 5: Zone 15; Easting: 422834; Northing: 3267044. Approximate UTM Coordinates in NAD 27 (meters) of the Platform "A": Zone 15; Easting: 424315; Northing: 3263213. Project Description: The applicant proposes to install a 6.625-inch diameter bulk gas pipeline to produce the Well No. 5 in Block 17. The 15,422-foot (2.92-mile) pipeline will cross the Sabine Pass Safety Fairway in Sabine Pass Area Block 17, and terminate at an existing Platform "A" in Block 10. The pipeline will be buried at a minimum of 10 feet within the safety fairway. The water depth at this location is 43 feet deep. CCC Project No.: 06-0338-F1; Type of Application: U.S.A.C.E. permit application #24248 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: F-W Oil Exploration LLC; Location: The project is located in the Gulf of Mexico, in federal waters, in North Padre Island Blocks 996 and 997, offshore, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Port Mansfield, Texas and Port Isabel, Texas. Approximate UTM Coordinates in NAD 27 (meters) of the Platform "A" Well: Zone 14; Easting: 697379; Northing: 2958300. Approximate UTM Coordinates in NAD 27 (meters) of the subsea tie-in: Zone 14; Easting: 706226; Northing: 2955935. Project Description: The applicant proposes to install an 8.625-inch diameter natural gas and condensate pipeline to produce the North Padre Island Platform "A" Well in Block 998. The 30,040-foot (5.69-mile) pipeline will cross the Brazos Santiago Safety Fairway in North Padre Island Blocks 997 and 996. The pipeline will be buried at a minimum of 10 feet within the safety fairway. The water depth at this location is 125 feet deep. CCC Project No.: 06-0339-F1; Type of Application: U.S.A.C.E. permit application #24249 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Martin Operating Partnership; Location: The project is located along the Gulf Intracoastal Waterway, at 3653 West Adams Avenue, in Port O'Connor, Calhoun County Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port O'Connor, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 749895; Northing: 3146764. Project Description: The applicant proposes to intermittently perform mechanical maintenance dredging on two existing barge slips to the previously authorized depth of 12.0 feet below mean low tide for a period of ten years. Each maintenance cycle will remove approximately 19,260 cubic yards of material from the slips, said material to be placed in an on-site, upland, dredged material placement area. CCC Project No.: 06-0343-F1; Type of Application: U.S.A.C.E. permit application #13602(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200603681
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: July 11, 2006

Notice of Texas Coastal Coordination Council's Submittal of Program Changes to the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management and Request for Public Comment

The Coastal Coordination Council (Council) is submitting its Coastal Management Program (CMP) changes to the Office of Ocean and Coastal Resource Management (OCRM) in the National Oceanic and Atmospheric Administration (NOAA) to obtain NOAA's approval. The Coastal Zone Management Act requires that the Council notify OCRM of any proposed change to Texas' approved CMP (16 U.S.C. §1455(e)(1)). This program change package addresses changes to the CMP since its approval by NOAA in December 1996.

The majority of the Council's program change package involves Council rule changes since January 1997. These rule changes may be found in 31 Texas Administrative Code (TAC) Chapters 501, 503, 504, 505, and 506. The program change package also includes an amended Memorandum of Agreement between the Council and the U.S. Army Corps of Engineers, which was part of the CMP approved by NOAA, in Appendix E1 of the Texas CMP Final Environmental Impact Statement, August 1996.

The program changes address several categories: Program Administration and Council Procedures (various sections in 31 TAC Chapters 501, 505 and 506); CMP Boundary (§501.3(b)(5) and §503.1); Permitting Assistance Program (Chapter 504); Natural Resource Damage Assessment Restoration Plans (§506.12(a)(1)(F)(ii) and §506.20(c)); Total Maximum Daily Loads (§501.21(a)(4) and §506.12(a)(2)(A)(iv)); Shore Protection Projects (§501.26); and Federal Consistency Requirements (various sections in Chapter 506).

There are no new enforceable policies to be added to the CMP with these program changes. However, the following two policies have been amended: Discharge of Municipal and Industrial Wastewater to Coastal

Waters (31 TAC §501.21) and Construction in the Beach/Dune System (31 TAC §501.26).

The Council considers the program changes to be routine program changes, and has requested the OCRM's concurrence in that determination. A routine program change is the further detailing of a state CMP that does not result in a substantial change to one or more of the following five program areas listed in 15 CFR §923.80(d): uses subject to management; special management areas; boundaries; authorities and organization; and coordination, public involvement and the national interest.

The Council solicits public comment regarding whether the program changes constitute routine program changes. Comments may be submitted to the OCRM within three weeks of the date of publication of this notice in the Texas Register. Please address comments to Ms. Carrie Hall, Coastal Program Specialist, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, 1305 East-West Hwy., Silver Spring, MD 20910-3278, carrie.hall@noaa.gov.

The program change package and the FEIS, as well as information concerning the Council and its duties, may be found on the Texas General Land Office website at http://www.glo.state.tx.us/coastal/ccc.html. To receive a copy of the program change package, please send a written request to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas, 78711-2873, deborah.cantu@glo.state.tx.us, facsimile (512) 463-6311.

TRD-200603680
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: July 11, 2006

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Comptroller of Public Accounts

Notice of Intent to Renew Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of intent to renew and extend a major consulting services contract in connection (previously bid under RFP No. 173a) for statistician consulting services to advise the Comptroller on statistical issues and provide other related services for the coming fiscal year in connection with the Comptroller's annual Property Value Study (Study).

Comptroller announces that the contract with Analytical Systems, Inc., 20 Colony Park Circle, P.O. Box 3041, Galveston, Texas 77551-3041, is being renewed and will be amended effective September 1, 2006, through August 31, 2007. The total amount of this contract is not-to-exceed $30,000.00. The original term of the contract is December 7, 2005 through August 31, 2006. The reports submitted under this contract will be due on or before August 31, 2007.

The notice of request for proposals (RFP #173a) was first published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 5046).

TRD-200603689
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 11, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/17/06 - 07/23/06 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/17/06 - 07/23/06 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200603670
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 11, 2006

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 21, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 21, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: BP Products North America, Inc.; DOCKET NUMBER: 2006-0310-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: THSC, §382.085(a), by allowing unauthorized emissions; and 30 TAC §101.20(3) and §116.715(a), New Source Review Flexible Air Permit Number 47256/PSD-TX-402M2, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $40,000; ENFORCEMENT COORDINATOR: Terry

Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Cal Farley's Boys Ranch; DOCKET NUMBER: 2006-0331-MWD-E; IDENTIFIER: RN101720548; LOCATION: Amarillo, Potter County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.42(a) and §305.63(a), by failing to submit an application for the renewal of the wastewater permit; and 30 TAC §30.350(j), by failing to employ a wastewater treatment operator holding the required level of license for the facility; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Ajit Durol dba Cherry Lane Food Mart; DOCKET NUMBER: 2006-0755-PST-E; IDENTIFIER: RN101642791; LOCATION: White Settlement, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Chevron Pipe Line Company; DOCKET NUMBER: 2006-0366-AIR-E; IDENTIFIER: RN104320924; LOCATION: Angleton, Brazoria County, Texas; TYPE OF FACILITY: pipeline; RULE VIOLATED: THSC, §382.085(a), by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2006-0252-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §116.115(c), Permit Numbers 2682A, 5682A, and 5920A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and (b)(8) and THSC, §382.085(b), by failing to submit initial notification of a reportable event and by failing to submit an accurate final report after an emissions event; PENALTY: $96,296; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Robert Vincent Hart; DOCKET NUMBER: 2006-0776-PWS-E; IDENTIFIER: RN103715892; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Curtis Houck; DOCKET NUMBER: 2006-0858-OSI-E; IDENTIFIER: RN103824405; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(8) COMPANY: Jose R. Garcia dba Joe's Texaco; DOCKET NUMBER: 2005-0530-PST-E; IDENTIFIER: RN102035136; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay underground storage tank (UST) fees; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Kempenaar Real Estate, Limited dba Still Meadow Dairy; DOCKET NUMBER: 2006-0415-AGR-E; IDENTIFIER: RN101523629; LOCATION: Como, Hopkins County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121(a), by failing to prevent the discharge of wastewater; 30 TAC §321.44(a) and (b)(1) and Confined Animal Feeding Operating (CAFO) General Permit Number TXG920000 Part III.A.5(c) and IV.B.(5), by failing to orally notify the executive director and appropriate regional office of a discharge from the facility and by failing to collect and analyze a grab sample of the unauthorized discharge for five-day biochemical oxygen demand, total coliform, fecal coliform, total dissolved solids, total suspended solids, nitrate, ammonia nitrogen, total phosphorus, and pesticides; and 30 TAC §321.36(1) and CAFO General Permit Number TXG920000 Part III.A.10(c), by failing to collect four animal carcasses and properly dispose of them within three days of death; PENALTY: $5,265; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: City of Kennedale; DOCKET NUMBER: 2006-0396-MWD-E; IDENTIFIER: RN101248656; LOCATION: Kennedale, Tarrant County, Texas; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Kriewaldt Tree Care, Inc.; DOCKET NUMBER: 2006-0488-MSW-E; IDENTIFIER: RN104796503; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: recycling center; RULE VIOLATED: 30 TAC §37.921 and §328.5(d), by failing to obtain and submit financial assurance; PENALTY: $1,120; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Chil L. Baldridge dba Lou's All Season Market; DOCKET NUMBER: 2006-0473-PST-E; IDENTIFIER: RN102019809; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide proper release detection; PENALTY: $3,680; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Meador Chrysler-Plymouth, Inc. dba Meador Chrysler Jeep; DOCKET NUMBER: 2006-0622-PST-E; IDENTIFIER: RN102050481; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: automobile dealership; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $800; ENFORCEMENT COORDINATOR: Christina Martinez, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: City of New Summerfield; DOCKET NUMBER: 2005-1931-PWS-E; IDENTIFIER: RN102692621; LOCATION: New

Summerfield, Cherokee County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: $325; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: City of Prairie View; DOCKET NUMBER: 2006-0205-MWD-E; IDENTIFIER: RN103769865; LOCATION: Prairie View, Waller County, Texas; TYPE OF FACILITY: sanitary sewer lift station; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of raw sewage; PENALTY: $2,600; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Mike Moyers dba Sandy Creek Farm; DOCKET NUMBER: 2006-0354-AGR-E; IDENTIFIER: RN104321625; LOCATION: Bridgeport, Wise County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.47(d)(3) and (5), (f)(3) and (11), (g)(2), and (i), by failing to provide certification by a licensed Texas professional engineer, by failing to provide certification that no significant hydrologic connection exists between the wastewater in the retention control structure and water in the state, by failing to conduct an annual analysis of at least one representative sample of irrigation wastewater and one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium, by failing to develop and utilize the required land application information, by failing to annually collect and analyze representative soil samples from the land management unit prior to commencing wastewater irrigation or manure application, and by failing to maintain on site all required records; PENALTY: $4,708; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Peter Ritenour dba Super Cleaners Sweeny; DOCKET NUMBER: 2006-0633-DCL-E; IDENTIFIER: RN103956025; LOCATION: Sweeny, Brazoria County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form; PENALTY: $624; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Jim Evans dba Terrell Sand & Recycling; DOCKET NUMBER: 2006-0346-WQ-E; IDENTIFIER: RN104251616; LOCATION: Rockwall, Rockwall County, Texas; TYPE OF FACILITY: sand and gravel mining operation; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with an industrial activity; PENALTY: $1,744; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Alex Addy dba USA Truck Stop; DOCKET NUMBER: 2006-0552-PWS-E; IDENTIFIER: RN101228773; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis; and 30 TAC §290.122(c)(2)(B), by failing to provide public notification of the failure to conduct the routine sampling; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Western Gas Resources, Inc.; DOCKET NUMBER: 2006-0439-AIR-E; IDENTIFIER: RN100223890; LOCATION: Midkiff, Upton County, Texas; TYPE OF FACILITY: natural gas liquids recovery plant; RULE VIOLATED: 30 TAC §§116.110(a)(4), 106.4(c), 106.6(c), 106.492, 106.352, 106.512(2)(A), Permit by Rule Registration Number 48309, and THSC, §382.085(b), by failing to comply with permitted emissions limits and maintain emissions control equipment in good condition; PENALTY: $42,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200603696
Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: July 12, 2006

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Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 21, 2006.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), the Texas Clean Air Act (the Act), and/or Texas Occupations Code. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 21, 2006.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: ABF Freight System, Inc.; DOCKET NUMBER: 2006-0135-PST-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN101628394; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: freight forwarder and transporter; RULE VIOLATED: 30 TAC §334.51(b)(2)(B) and the Code, §26.3475(c)(2), by failing to equip the fill tube of the tank with either an attached spill container or catchment basin or enclose it in a liquid-tight manway, riser, or sump; 30 TAC §334.10(b), by failing to make available legible copies of all required underground storage tank (UST) records; 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records and by failing to record inventory volume measurement; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon

or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(2) COMPANY: Adeel, Inc. dba Carson Food Market; DOCKET NUMBER: 2006-0182-PST-E; IDENTIFIER: RN101535953; LOCATION: Haltom City, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to properly conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to obtain the Stage II station representative certification and to provide in-house training to each/all current employee(s); 30 TAC §115.246(1) and THSC, §382.085(b), by failing to have a copy of the California Air Resources Board (CARB) Executive Order for the Stage II vapor recovery system (VRS); 30 TAC §334.49(c)(2)(C) and (4)(C), and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system and by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(a)(1)(A) and (d)(1)(B)(iii)(II), and the Code, §26.3475(c)(1), by failing to provide a method of release detection and by failing to have an accurate means of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 of an inch; 30 TAC §334.7(d)(3), by failing to provide an amended UST registration; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remain in the temporarily out of service UST did not exceed a depth of 2.5 centimeters at the deepest point; 30 TAC §334.72(2), by failing to report a suspected release within 24 hours of a failing tank tightness test; 30 TAC §334.74(2), by failing to investigate a suspected release and conduct a site check after receiving a failing tank tightness test result; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s); PENALTY: $28,000; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Altaf Food Store, Inc. dba Pennysaver Foodstore; DOCKET NUMBER: 2006-0235-PST-E; IDENTIFIER: RN101447209; LOCATION: Addison, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii), and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored in a manner which will detect a release and by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.7(a)(1), by failing to properly register the UST system; 30 TAC §334.49(a)(4) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground components of a UST system; and 30 TAC §334.48(a) and (c), by failing to prevent an unauthorized discharge of gasoline and by failing to properly conduct effective manual or automatic inventory control procedures; PENALTY: $7,040; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Alvarado; DOCKET NUMBER: 2006-0404-MLM-E; IDENTIFIER: RN101394385; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and (iii), and THSC, §341.0315(c), by failing to provide two or more wells with a total well capacity of 0.6 gallons per minute (gpm) per connection and by failing to provide two or more service pumps with a total service capacity of two gpm per connection; 30 TAC §290.43(c)(3)(B), by failing to provide a well casing that is at least 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.44(h)(4)(C), by failing to demonstrate that backflow prevention devices had been tested for proper operation; 30 TAC §290.41(c)(3)(J), (K), (M), and (N), by failing to repair the cracked concrete sealing blocks, by failing to provide well number six with a screened casing vent, by failing to provide a suitable sampling tap, and by failing to provide a flow meter; 30 TAC §290.46(m)(4), by failing to maintain all water system distribution lines and related appurtenances; 30 TAC §290.43(e), by failing to maintain intruder-resistant fences and gates; and 30 TAC §288.20, by failing to provide a drought contingency plan; PENALTY: $3,120; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Arthur Thompson Post Number 8905, Veterans of Foreign Wars of the United States, Cypress, Texas; DOCKET NUMBER: 2006-0318-PWS-E; IDENTIFIER: RN101652147; LOCATION: Cypress, Harris County, Texas; TYPE OF FACILITY: recreational facility with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis and by failing to post a public notification of that failure; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay water system and public health service fees; PENALTY: $1,980; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Dennis O. Brito; DOCKET NUMBER: 2006-0204-LII-E; IDENTIFIER: RN103543013; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: general contractor; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), the Code, §37.003(a), and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: $500; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Buda; DOCKET NUMBER: 2006-0390-WQ-E; IDENTIFIER: RN104917109; LOCATION: Buda, Hays County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $2,160; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(8) COMPANY: Choice Petroleum, Inc. dba Gators 2; DOCKET NUMBER: 2006-0274-PST-E; IDENTIFIER: RN102049053; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the UST records and make them immediately available for inspection upon request; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $4,651; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Cibolo Grocery Store, Inc.; DOCKET NUMBER: 2006-0226-PST-E; IDENTIFIER: RN104568753; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored in a manner which will detect a release; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Steven Mahr, (512) 239-6017; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Mansoor Khawaja dba CJ's One Stop 2; DOCKET NUMBER: 2006-0172-PWS-E; IDENTIFIER: RN101797504; LOCATION: Porter, Montgomery County, Texas; TYPE OF FACILITY: gas station with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to conduct routine monthly bacteriological analysis; PENALTY: $1,313; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Arthur M. Gonzalez dba David's Superette; DOCKET NUMBER: 2006-0197-PST-E; IDENTIFIER: RN101752947; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,568; ENFORCEMENT COORDINATOR: Steven Mahr, (512) 239-6017; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Enbridge Pipelines East Texas L.P.; DOCKET NUMBER: 2006-0092-AIR-E; IDENTIFIER: RN100224914; LOCATION: Lanley, Freestone County, Texas; TYPE OF FACILITY: natural gas treating; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 31352, and THSC, §382.085(b), by failing to comply with permitted emission limits; PENALTY: $15,680; ENFORCEMENT COORDINATOR: Amy Burgess, (512) 239-2540; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2005-0644-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.201(b)(7) and (c), and THSC, §382.085(b), by failing to include the compound descriptive type of all individually listed compounds or mixtures of air contaminants in the final record and by failing to submit a copy of the final record of an emissions event; and 30 TAC §116.116(a)(1) and THSC, §382.085(b), by failing to obtain regulatory authority or to meet the demonstration requirements of 30 TAC §101.222 for emissions; PENALTY: $21,493; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2006-0132-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a copy of the final record for a reportable emissions event; and 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), Air New Source Review Permit Number 7799/PSD-TX-860, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; PENALTY: $10,093; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Jarrell Texaco, Inc.; DOCKET NUMBER: 2006-0181-PST-E; IDENTIFIER: RN101310316; LOCATION: Jarrell, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.48(c), by failing to conduct effective manual or automotive inventory control procedures for all USTs; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information on the registration; PENALTY: $6,120; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(16) COMPANY: Jerry, Jr. Inc. dba Country Store; DOCKET NUMBER: 2006-0256-PST-E; IDENTIFIER: RN101444677; LOCATION: Cotulla, La Salle County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide proper release detection; PENALTY: $3,240; ENFORCEMENT COORDINATOR: Christina Martinez, (512) 239-0739; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: City of Laredo; DOCKET NUMBER: 2005-1996-MLM-E; IDENTIFIER: RN100524099 and RN103026043; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(a) and (b)(2)(F) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 111 gallons per connection or a pressure tank capacity of 22.2 gallons per connection for each pressure plane, by failing to provide a total storage capacity of 222 gallons per connection for each pressure plane, and by failing to provide a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of two gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands; 30 TAC §290.44(d)(2), by failing to acquire plan approval for service connections that require booster pumps; 30 TAC §290.46(m), (q)(1), and (r), by failing to ensure the good working condition and general appearance of the system's facilities and equipment, by failing to issue a boil water notification, and by failing to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.42(d)(5) and §290.45(a), by failing to provide a flow measuring device; 30 TAC §290.43(c)(3), by failing to design overflows in strict accordance with current American Water Works Association standards; and 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number 10681-002, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $45,300; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: Milwhite, Inc.; DOCKET NUMBER: 2006-0268-AIR-E; IDENTIFIER: RN100826361; LOCATION: Van Horn, Culberson County, Texas; TYPE OF FACILITY: talc manufacturing; RULE VIOLATED: 30 TAC §116.115(c) and THSC, §382.085(b), by failing to install permanently mounted spray bars on the primary crusher; PENALTY: $600; ENFORCEMENT COORDINATOR: Amy Burgess, (512) 239-2540; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(19) COMPANY: Moss Bluff Hub Partners, L.P.; DOCKET NUMBER: 2006-0231-AIR-E; IDENTIFIER: RN100217256; LOCATION: Liberty, Liberty County, Texas; TYPE OF FACILITY: natural gas storage; RULE VIOLATED: THSC, §382.085(a), by failing to meet the demonstrations for an affirmative defense; PENALTY: $70,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Gary Stahlheber dba Oakridge Mobile Home Park; DOCKET NUMBER: 2005-2061-OSS-E; IDENTIFIER: RN104609250; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.70 and the Code, §26.121(a), by failing to operate and maintain the on-site sewage facility (OSSF) to prevent the unauthorized discharge of sewage; 30 TAC §285.7(c)(2)(B), by failing to have an annual maintenance contract for the OSSF to ensure that proper maintenance is being performed; 30 TAC §285.34(b)(1) and §285.70, by failing to maintain water-tight seals on two pumps at the site; and 30 TAC §285.3(a), by failing to obtain a permit to make repairs and alterations to the OSSF; PENALTY: $1,320; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Parker-Hannifin Corporation; DOCKET NUMBER: 2006-0203-AIR-E; IDENTIFIER: RN100218726; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: rubber gaskets and seals manufacturing; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(5)(D), Federal Operating Permit Number 1101, and THSC, §382.085(b), by failing to report an emissions event in a deviation report and to reference the event on the annual compliance certification; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Marjorie Powell; DOCKET NUMBER: 2006-0234-LII-E; IDENTIFIER: RN104479316; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §30.5(b) and §344.58(b), the Code, §37.003, and Texas Occupations Code, §1903.251, by failing to refrain from using or attempting to use the license of someone else who is a licensed irrigator or installer and by failing to refrain from advertising or representing themselves to the public as a holder of a license or registration unless they possess a current license or registration; PENALTY: $200; ENFORCEMENT COORDINATOR: Carolyn Lind, (905) 535-5100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Roger Rutledge; DOCKET NUMBER: 2006-0159-LII-E; IDENTIFIER: RN104858907; LOCATION: Eastland, Eastland County, Texas; TYPE OF FACILITY: irrigator; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), the Code, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(24) COMPANY: Weldon W. Alders dba Southampton Subdivision and dba Meadow Glen Crystal Springs Water; DOCKET NUMBER: 2006-0217-PWS-E; IDENTIFIER: RN101239887 and RN101220580; LOCATION: Dayton, Liberty County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (iii), and THSC, §341.0315(c), by failing to provide a storage capacity of 200 gallons per connection and by failing to provide two or more pumps having a total capacity of two gpm per connection; 30 TAC §290.110(e)(4), by failing to submit a quarterly distribution report; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the water system's pressure tank and by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $7,728; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Springtown Independent School District; DOCKET NUMBER: 2006-0287-MWD-E; IDENTIFIER: RN101524866; LOCATION: Reno, Parker County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §319.7(c), by failing to maintain required records at the facility; 30 TAC §305.125(1) and Permit Number WQ0014054001, by failing to submit the required annual soil samples, by failing to prevent public access to the irrigation disposal site, and by failing to submit the annual sludge report; and 30 TAC §319.4 and Permit Number WQ0014054001, by failing to conduct weekly biochemical oxygen demand analyses; PENALTY: $4,280; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Texas H20, Inc.; DOCKET NUMBER: 2006-0218-PWS-E; IDENTIFIER: RN101992188; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and (e)(5), and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection and by failing to maintain a secure seal on the hypochlorination container; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.41(c)(3)(O), by failing to maintain the fencing at the Jackson Bend and Midway Court pump stations; and 30 TAC §290.46(m), by failing to maintain the water supply grounds and facilities in a manner so as to minimize the possibility of the harboring of rodents, insects, or other disease vectors that could cause the contamination of the water; PENALTY: $798; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Texas Malik Enterprises, Inc. dba KC2 Grocery Store; DOCKET NUMBER: 2006-0245-PST-E; IDENTIFIER: RN101634889; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to have a method of release detection which was capable of detecting a release; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §334.8(c)(5)(A)(i) and (B)(ii) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, delivery certificate and by failing to timely renew a previously issued delivery certificate; and 30 TAC §115.242(3) and the THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: $8,560; ENFORCEMENT COORDINATOR: Joseph Daley, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2006-0187-AIR-E; IDENTIFIER: RN104150123; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 260, and the THSC, §382.085(b), by failing to prevent an

unauthorized release of 7,000 pounds of Freon 22; PENALTY: $1,880; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: The Enclave at Canyon Lake, Limited; DOCKET NUMBER: 2006-0213-EAQ-E; IDENTIFIER: RN104771928; LOCATION: San Antonio, Comal County, Texas; TYPE OF FACILITY: 184-acre single-family residential construction site; RULE VIOLATED: 30 TAC §213.21(d), by failing to obtain approval of an Edwards Aquifer Contributing Zone plan; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: The Optimist Club of Town & Country, Round Rock, Texas; DOCKET NUMBER: 2006-0237-EAQ-E; IDENTIFIER: RN102731007; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: land; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement plan exception request prior to construction activities; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(31) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2006-0532-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil refining; RULE VIOLATED: 30 TAC §§101.2(2), 111.111(a)(1)(B), 115.112(a)(1), 115.121(l), 116.115(b)(2)(F) and (c), and 116.166(b)(1), New Source Review Air Permit Numbers 2501A, Special Condition Number 1; 2507A, Special Condition Number 1; and 2614, Special Condition Number 1, and THSC, §382.085(a) and (b), by failing to comply with permitted emissions limits; 30 TAC §101.201(a)(1)(B) and (b)(7), (8), (10), and (12), and THSC, §382.085(b), by failing to properly submit emissions events reports; and 30 TAC §101.4, by failing to prevent nuisance conditions; PENALTY: $700,000; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200603697
Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: July 12, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of June 30, 2006 through July 5, 2006.

The following require the applicants to publish notice in the newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

EMERALD BAY MUNICIPAL UTILITY DISTRICT has applied for a renewal of Permit No.13165-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via surface irrigation of 126 acres of a golf course. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located west of Farm-to-Market Road 344, approximately 2 1/4 miles south of the intersection of State Highway 155 and Farm-to-Market Road 344 in Smith County, Texas.

BEN WHEELER WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13974-001, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 5500 gallons per day. The facility is located approximately 100 feet south of Farm-to-Market Road 279 (behind the First State Bank Building) which is adjacent and on the south side of Farm-to-Market Road 279 in the Community of Ben Wheeler in Van Zandt County, Texas.

H.I.S. INSTEAD, INC. has applied for a renewal of Permit No. 14395-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 22,000 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 222,156 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1,700 feet due east of a point on State Highway 300 which is approximately 2,900 feet north of the intersection of Gregg Tex Road and State Highway 300 and 3,500 feet south of the intersection of State Highway 300 and Farm-to-Market Road 1844 in Gregg County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200603699
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 12, 2006

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Notice of Water Rights Application

Notices issued July 3, 2006 through July 7, 2006

APPLICATION NO. 5920 (WRPERM 5920); Alvin Starr, Pamela Starr, and Nathan Starr, 15651 E. U.S. 80, Sunnyvale, Texas 75182, Applicants, have applied for a Water Use Permit to divert and use not to exceed 320 acre-feet of water per year from the East Fork Trinity River, Trinity River Basin, for agricultural purposes in Kaufman County, Texas. The application and partial fees were received on October 7, 2005, and requested information and fees were received on December 27, 2005, and February 13, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 16, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 14-1571B (ADJ 1571); Kingsland Water Supply Corporation (WSC) , applicant, 1422 West Drive, P.O. Box 73, Kingsland, TX 78639, seeks an amendment to Certificate of Adjudication No. 14-1571 to change the use of 40 acre-feet of water from mining to municipal purposes, change the diversion points to a single point on Lake

LBJ (owned by LCRA) on the Llano River, Colorado River Basin, in Llano County, and delete the impoundments and diversion authorization to maintain circulation. The application was received on April 4, 2006. Additional information and fees were received on May 8 and June 2, 2006. The application was declared administratively complete and accepted for filing on June 14, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by July 26, 2006.

APPLICATION NO. 5921 (WRPERM 5921); The City of Lubbock ("Applicant" or "City"), P.O. Box 2000, Lubbock, TX 79457, has applied for a Water Use Permit to construct two dams and reservoirs on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, to divert and use water from those reservoirs, and to use the bed and banks of the North Fork Double Mountain Fork Brazos River, including certain specified tributaries, for the conveyance of water sought for diversion for municipal, industrial, and agricultural purposes in Lubbock and Lynn Counties. The application and partial fees were received on October 17, 2005. Additional information and fees were received on January 31, March 24, and April 13, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 17, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 12034; Arkema Inc., Applicant, P.O. Box 1427, Beaumont, Texas 77704, has applied for a Water Use Permit to divert water from the Neches River, Neches River Basin into a steel tank for subsequent use for industrial purposes in Jefferson County. The application and partial fees were received on March 30, 2006, and additional information and fees were received on May 19, June 7, and June 14, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 29, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200603700
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 12, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 5, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Tres NLSS MG Corporation dba Sam's Food Mart; SOAH Docket No. 582-06-0882; TCEQ Docket No. 2004-1433-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Tres NLSS MG Corporation dba Sam's Food Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200603701
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 12, 2006

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

Deadline: Lobby Activities Report due March 10, 2005

Frank Jackson, 701 Brazos, #500, Austin, Texas 78701

Deadline: Lobby Activities Report due April 10, 2006

Mark Seale, 1122 Colorado St., Ste. 111-A, Austin, Texas 78701

Deadline: Personal Financial Statement due December 21, 2005

Stanley N. Matthews, 16 Waterford Gardens, Orange, Texas 77630

Deadline: Personal Financial Statement due February 13, 2006

Meagan Barclay, 241 N. Ranch House Rd., Angleton, Texas 77515-2778

Jack F. Borden, Sr., P. O. Box 191913, Dallas, Texas 75219-8509

Judith Ann Cobbett, 2550 Long St., Beaumont, Texas 77702-1612

Harold V. Dutton, Jr., 4001 Jewett St., Houston, Texas 77026

Milton I. Fagin, P. O. Box 100777, San Antonio, Texas 78201-8777

Steve P. Franklin, 303 W. Loop 281, Ste. 110, Longview, Texas 75605-4470

Guillermo Gandara, Jr., 10736 Thunder Dr., El Paso, Texas 79927-4817

Ronald Mitchell Gjemre, 3605 Crosswind Dr., Spicewood, Texas 78669-6554

Darrell R. Grear, 1304 Red Oak St., Bryan, Texas 77803-1583

William E. Harrison, 2607 Kimberly Dawn Dr., Conroe, Texas 77304-5018

William Gilbert Jean, 3924 Eaton Dr., Amarillo, Texas 79109-4034

Jeffrey Joyner, 2631 Rio Grande Pass, Mesquite, Texas 75150-4843

Star Locke, 8201 Weber Rd., Corpus Christi, Texas 78415-9723

Tony Mandujano, 18181 Senior Rd., Von Ormy, Texas 78073-4239

Cameron McSpadden, 908 Cedar Hill Ave, Dallas, Texas 75208-4016

Alfredo Montano, Jr., 1021 E. Taylor St., Harlingen, Texas 78550-7271

Morris L. Overstreet, P. O. Box 12817, Austin, Texas 78711-2817

Michael Raymond Redlich, 720 Summerfield Dr., Allen, Texas 75002-1820

Martha Y. Reyes, 436 Mockingbird Rd., El Paso, Texas 79907-4405

Richard F. Reynolds, 10808 River Plantation Dr., Austin, Texas 78747-1482

Thomas Peter Roebuck, 701 Neches Oaks Blvd., Port Neches, Texas 77651-2125

Terry A. Schoellkopf, 7111 Winkleman Rd., Houston, Texas 77083-4337

Herschel Smith, 10201 Telephone Rd., Apt 45A, Houston, Texas 77075-2970

John Patrick Snow, 1229 Marshall St., Vernon, Texas 76384

Brandon Stacker, 5603 16th Pl, Lubbock, Texas 79416-5306

Fred Tinsley, 8611 Quicksilver Dr., Dallas, Texas 75249-2609

John White, 400 E. Weatherford St., Fort Worth, Texas 76102-2242

Chris M. Zora, 803 Shawnee Dr., Montgomery, Texas 77316-4858

Deadline: Personal Financial Statement due May 1, 2006

Holly L. Anawaty, 8519 Chalcos Dr., Houston, Texas 77017

Patrick L. Brockett, University of Texas, Dept. MSIS, CBA 5.202, Austin, Texas 78712

Jose E. DeSantiago, Sr., 15927 Jove St., Houston, Texas 77060

Edward E. Hargett, 339 County Road 222, Nacogdoches, Texas 75965

Tony G. Hedges, D.O., 104 East 21st St., Littlefield, Texas 79339

Jerry Franklin House, Sr., P. O. Box 217, Leona, Texas 75850

Janice B. Howard, 8542 Hidden Hollow Ct., Missouri City, Texas 77459

Kenneth A. James, 1914 Riverglen Forest Dr., Kingwood, Texas 77345

J. Paul Johnson, 4115 Shadow Haven Dr., Fresno, Texas 77545

Victor E. Leal, 301 Lake Ridge Rd., Canyon, Texas 79015

Larry Robert Leibrock, 16457 Lake Loop Dr., Austin, Texas 78734

B. W. McClendon, 7401 Sevilla Dr., Austin, Texas 78752

Tuck M. McLain, 703 Church St., Navasota, Texas 77830

John C. Morris, 213 Cottontail Dr., Leander, Texas 78641

Cliff Mountain, 2909 Meandering River Ct., Austin, Texas 78746

Scott James Petty, 1200 State Highway 173 N., Hondo, Texas 78861

Cindy Ramos-Davidson, 520 Pinar Del Rio Dr., El Paso, Texas 79932

Randall W. Reynolds, P. O. Box 150, Pecos, Texas 79772

Eddie P. Richardson, 1302 Ave Q, Lubbock, Texas 79401

Linda J. Sadler, 3219 64th St., Lubbock, Texas 79413

Lawrence M. Sampleton, Jr., P. O. Box 1868, Austin, Texas 78767

Troy Simmons, DDS, 503 N. 6th St., Longview, Texas 75601

Arthur N. Sosa, 7825 Damsel St, Corpus Christi, Texas 78413

Linda Diane Stinebrueck, 1401 Darden Hill Rd., Driftwood, Texas 78619-9778

Michael D. Thamm, 301 Depot, Cuero, Texas 77954

William H. Thurman, 10500 Painted Valley Cv., Austin, Texas 78759

Linda R. Yanez, 1401 Shay Lane, Edinburg, Texas 78539-6000

TRD-200603646
David Reisman
Executive Director
Texas Ethics Commission
Filed: July 7, 2006

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Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Correction of Error

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposed an amendment to 4 TAC §61.61 in the July 7, 2006, issue of the *Texas Register* (31 TexReg 5433). Due to errors in the submission the following corrections need to be made.

In the Preamble, Paragraph 3, beginning in Line 6, the statement should have read: "...institutions pertaining to the disposing of grain containing >500 parts per billion (ppb) aflatoxin, and oilseed, processed grain, and oilseed meal containing >300 ppb aflatoxin."

In the Preamble, Paragraph 6, Line 2, the statement should have read: "Subchapter G, §141.148 is affected by the proposed amendments."

In §61.61(a)(6), beginning on Line 10, the statement should have read: "≤300 ppb [~~less than 300 ppb~~] may be distributed when destined for finishing [~~feedlot~~] cattle in confinement; grain containing >300 to ≤500 ppb aflatoxin requires a blending permit issued by the Office of the Texas State Chemist; aflatoxin >500 ppb in grain and >300 ppb in oilseed, processed grain, and oilseed meal may not enter commerce and a record of disposition shall be submitted to the Office of the Texas State Chemist."

TRD-200603722

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Texas Health and Human Services Commission

Notice Concerning Implementation Date for CHIP Eligibility for Unborn Children Rule at 1 TAC §370.401

The Texas Health and Human Services Commission (HHSC) adopted 1 TAC §370.401, Eligibility for Unborn Children, as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3527), with an effective date of April 30, 2006. HHSC published a notice of its intent to implement the rule beginning September 1, 2006, in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4264). At this time, HHSC gives notice of its intent to implement the rule on January 1, 2007.

TRD-200603634
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 7, 2006

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Notice of Extension of Comment Period and Notice of Hearing on Proposed Provider Participation Requirements

Extension of Comment Period on Proposed Amendment to 1 TAC §354.1077. The Texas Health and Human Services Commission (HHSC) has extended the comment period for a proposed amendment to 1 TAC §354.1077, Provider Participation Requirements. The proposed amendment would require hospitals in eight urban service areas to comply with the reimbursement provisions and rate reductions of 1 TAC §355.8064 in order to participate in the Texas Medicaid Program. The proposed amendment to the rule was published for the required 30-day public comment period in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4973). HHSC has extended the comment period until 5:00 p.m. on July 26, 2006. The anticipated effective date of the proposed rule amendment is September 1, 2006.

Public Hearing. HHSC will conduct a public hearing to receive public comment on the proposed amendment to 1 TAC §354.1077. As stated above, the proposed amendment was published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4973). The anticipated effective date of the proposed rule amendment is September 1, 2006.

The public hearing will be held on July 26, 2006, from 9:30 a.m. to 11:30 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard.

Written comments regarding the proposed provider participation requirements may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Alisa Jacquet, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by e-mail to alisa.jacquet@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Jacquet, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Jacquet at (512) 491-1998.

Persons requiring further information, special assistance, or accommodations should contact Irene Cantu at (512) 491-1358 by July 25, 2006, so that appropriate arrangements can be made.

TRD-200603716
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 12, 2006

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Notice of Extension of Comment Period and Notice of Hearing on Proposed Reimbursement Adjustments for Hospitals Providing Inpatient Services to Supplemental Security Income (SSI) and SSI-Related Clients

Extension of Comment Period on Proposed New 1 TAC §355.8064. The Texas Health and Human Services Commission (HHSC) has extended the comment period for proposed new 1 TAC §355.8064, Reimbursement Adjustment for Hospitals Providing Inpatient Services to SSI and SSI-related Clients. The proposed new rule would modify the Medicaid reimbursement to hospitals in eight urban service areas for inpatient services to Supplemental Security Income (SSI) and SSI-related clients. The proposed rule was published for the required 30-day public comment period in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4976). HHSC has extended the comment period until 5:00 p.m. on July 26, 2006. The anticipated effective date of the proposed rule is September 1, 2006.

Public Hearing. HHSC will conduct a public hearing to receive public comment on the proposed new 1 TAC §355.8064. As stated above, the proposed new rule was published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4976). The anticipated effective date of the proposed rule is September 1, 2006.

The public hearing will be held on July 26, 2006, from 9:30 a.m. to 11:30 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard.

Written comments regarding the proposed reimbursement adjustments may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Alisa Jacquet, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by e-mail to alisa.jacquet@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Jacquet, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Jacquet at (512) 491-1998.

Persons requiring further information, special assistance, or accommodations should contact Irene Cantu at (512) 491-1358 by July 25, 2006, so that appropriate arrangements can be made.

TRD-200603719
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 12, 2006

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Notice of Extension of Comment Period and Notice of Hearing on Proposed Reimbursement Methodology for Inpatient Psychiatric Facilities

Extension of Comment Period on Proposed Amendment to 1 TAC §355.8063. The Texas Health and Human Services Commission (HHSC) has extended the comment period for a proposed amendment to 1 TAC §355.8063, Reimbursement Methodology for Inpatient Hospital Services. The proposed amendment modifies §355.8063(o) to add freestanding psychiatric inpatient facilities to those facilities that are reimbursed under the Tax Equity and Fiscal Responsibility Act cost principles. The proposed amendment to the rule was published for the required 30-day public comment period in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4974). HHSC has extended

the comment period until 5:00 p.m. on July 26, 2006. The anticipated effective date of the proposed rule is September 1, 2006.

Public Hearing. HHSC will conduct a public hearing to receive public comment on the proposed amendment to 1 TAC §355.8063. As stated above, the proposed amendment was published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4974). The anticipated effective date of the proposed rule is September 1, 2006.

The public hearing will be held on July 26, 2006, from 8:30 a.m. to 9:30 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard.

Written comments regarding the proposed reimbursement methodology may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Alisa Jacquet, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by e-mail to alias.jacquet@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Jacquet, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Jacquet at (512) 491-1998.

Persons requiring further information, special assistance, or accommodations should contact Irene Cantu at (512) 491-1358 by July 25, 2006, so that appropriate arrangements can be made.

TRD-200603715
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 12, 2006

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Notice of Extension of Comment Period and Notice of Hearing on Proposed Supplemental Payments to Children's Hospitals

Extension of Comment Period on Proposed New 1 TAC §355.8071. The Texas Health and Human Services Commission (HHSC) has extended the comment period for proposed new 1 TAC §355.8071, Supplemental Payments to Children's Hospitals. The proposed new rule establishes the methodology HHSC will use to distribute supplemental (Medicaid Upper Payment Limit) payments to Medicare-designated children's hospitals to cover the costs incurred in providing Medicaid inpatient and outpatient services. The proposed rule was published for the required 30-day public comment period in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4977). HHSC has extended the comment period until 5:00 p.m. on July 26, 2006. The anticipated effective date of the proposed rule is September 1, 2006.

Public Hearing. HHSC will conduct a public hearing to receive public comment on the proposed new 1 TAC §355.8071. As stated above, the proposed new rule was published in the June 23, 2006, issue of the *Texas Register* (31 TexReg 4977). The anticipated effective date of the proposed rule is September 1, 2006.

The public hearing will be held on July 26, 2006, from 8:30 a.m. to 9:30 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard.

Written comments regarding the proposed supplemental payments may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kevin Niemeyer, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by e-mail to kevin.niemeyer@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Mr. Niemeyer, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Mr. Niemeyer at (512) 491-1998.

Persons requiring further information, special assistance, or accommodations should contact Irene Cantu at (512) 491-1358 by July 25, 2006, so that appropriate arrangements can be made.

TRD-200603714
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 12, 2006

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Notice of Hearing on Proposed Provider Reimbursement Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will hold a public hearing on August 8, 2006, at 2:00 p.m., to receive comment from interested persons on proposed Medicaid reimbursement rates applicable to providers of Home and Community-based Services (HCS), Texas Home Living (TxHmL) and Community Living Assistance and Support Services (CLASS). The public hearing will be held at HHSC's Braker Center facility in Austin, Texas, at 11209 Metric Boulevard, Building H, Lone Star Room No. 1047. The public hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before HHSC approves such rates. Persons with disabilities who wish to attend the public hearing and who require auxiliary aids or services should contact Ms Irene Cantu at (512) 491-1358 by August 1, 2006, so that appropriate arrangements can be made.

Written and oral comments. The proposed rates will be effective on September 1, 2006, if approved, and will result in a restoration of reimbursements to the level of rates in effect on August 31, 2003. Written comments about the proposed reimbursement rates may be submitted until 5:00 p.m. on August 8, 2006, in lieu of or in addition to oral comments presented at the public hearing. Written comments may be hand-delivered or sent by U.S. mail or overnight express to the attention of Irene Cantu, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu's attention at (512) 491-1998.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter E, §355.505, Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program and Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services (HCS), and §355.791, Reimbursement Methodology for the TxHmL Program.

Briefing package. A reimbursement rate briefing package describing the proposed reimbursement rates will be available, upon request, no later than July 21, 2006. Interested persons may request a copy of the briefing package by contacting Irene Cantu at (512) 491-1358.

TRD-200603710
Lee Dickinson
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 12, 2006

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Notice of Hearing on Proposed Provider Reimbursement Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will hold a public hearing on August 8, 2006, at 2:00 p.m., to receive comment from interested persons on proposed Medicaid reimbursement rates applicable to non-state operated providers of Intermediate Care Facility for Persons with Mental Retardation (ICF/MR). The public hearing will be held at HHSC's Braker Center facility in Austin, Texas, at 11209 Metric Boulevard, Building H, Lone Star Room No. 1047. The public hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before HHSC approves such rates. Persons with disabilities who wish to attend the public hearing and who require auxiliary aids or services should contact Ms. Irene Cantu at (512) 491-1358 by August 1, 2006, so that appropriate arrangements can be made.

Written and oral comments. The proposed rates will be effective on September 1, 2006, if approved, and will result in a restoration of reimbursements to the level of rates in effect on August 31, 2003. Written comments about the proposed reimbursement rates may be submitted until 5:00 p.m. on August 8, 2006, in lieu of or in addition to oral comments presented at the public hearing. Written comments may be hand-delivered or sent by U.S. mail or overnight express to the attention of Irene Cantu, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu's attention at (512) 491-1998.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following daily reimbursement rates for non-state operated providers of ICF/MR effective September 1, 2006.

Non-State-Operated ICF/MR

Effective September 1, 2006			
Level of Need	8 or Less Beds	9 - 13 Beds	14+ Beds
1 Intermittent	$139.32	$116.96	$90.85
5 Limited	$155.36	$128.74	$102.78
8 Extensive	$177.51	$150.11	$115.09
6 Pervasive	$217.73	$181.89	$160.34
9 Pervasive +	$383.34	$359.44	$354.81

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter D, §355.456(f), Rate Setting Methodology.

Briefing package. A reimbursement rate briefing package describing the proposed reimbursement rates will be available, upon request, no later than July 21, 2006. Interested persons may request a copy of the briefing package by contacting Irene Cantu at (512) 491-1358.

TRD-200603712

Lee Dickinson
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 12, 2006

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	RTD Pipeline Services USA LP	L05985	Houston	00	06/22/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	ARMC LP DBA Abilene Regional Medical Center	L02434	Abilene	77	06/29/06
Abilene	Hendrick Medical Center	L02433	Abilene	92	06/19/06
Arlington	Texas Oncology PA DBA Texas Cancer Center Arlington	L05116	Arlington	12	06/14/06
Baytown	Jacinto MRI and Diagnostic Center	L04808	Baytown	13	06/29/06
Bedford	Texas Oncology PA DBA Edwards Cancer Center	L05550	Bedford	10	06/14/06
College Station	BCS Heart LLP	L04890	College Station	14	06/16/06
Dallas	Baylor Radio Surgery Center DBA Baylor University Medical Center	L05842	Dallas	06	06/27/06
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	101	06/20/06
Houston	American Diagnostic Tech LLC	L05514	Houston	26	06/30/06
Houston	Cardiac Nuclear Imaging Inc	L05962	Houston	01	06/29/06
Houston	CHCA Womans Hospital LP DBA The Womens Hospital of Texas	L04834	Houston	13	06/16/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	92	06/20/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	114	06/21/06
Houston	Northwest Cardiology Consultants PA	L05795	Houston	07	06/29/06
Houston	Nuclear Imaging Services LLC	L05775	Houston	19	06/28/06
Houston	The Methodist Hospital	L00457	Houston	142	06/16/06
Houston	The Methodist Hospital	L00457	Houston	143	06/29/06
Houston	Welbor Technology Inc	L05925	Houston	02	06/22/06
Kingsville	Christus Spohn Health System DBA Christus Spohn Hospital Kleberg	L02917	Kingsville	40	06/21/06
LaGrange	Austin Heart LaGrange	L05516	LaGrange	15	06/16/06
Laredo	Laredo Texas Hospital Company LP DBA Laredo Medical Center	L01306	Laredo	53	06/02/06
Linden	Good Shepard Medical Center Linden Inc	L02721	Linden	20	06/16/06
Lubbock	Cardiologist of Lubbock PA	L05038	Lubbock	18	06/27/06
Lubbock	Radiation Oncology of the South Plains PA	L05418	Lubbock	07	06/13/06
Lubbock	W Chuck Brogan III MD PHD PA DBA Brogan Heart Center	L05488	Lubbock	06	06/21/06
McAllen	Valley Heart Consultants	L05330	McAllen	07	06/16/06
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	35	06/29/06
Paris	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	10	06/22/06
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	34	06/21/06
Port Arthur	Christus Health Southeast Texas DBA Christus Hospital St Mary	L01212	Port Arthur	90	06/21/06
Port Arthur	Smith and Thome Cardiovascular Consultants LLP	L05743	Port Arthur	02	06/16/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	90	06/09/06
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	216	06/20/06
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	147	06/20/06
Tyler	Trinity Mother Frances Health System	L01670	Tyler	123	06/27/06
Waco	Baylor University Department of Risk Management	L00400	Waco	22	06/16/06
Throughout Tx	Team Industrial Service Inc	L00087	Alvin	145	06/20/06
Throughout Tx	Xcel Energy Southwestern Public Service DBA Utility Engineering Corp	L05238	Amarillo	08	06/15/06
Throughout Tx	Gessner Engineering LLP	L03733	Brenham	16	06/21/06
Throughout Tx	National Inspection Services LLC	L05930	Crowley	07	06/29/06
Throughout Tx	Kiewit Texas Construction LP	L04569	Fort Worth	19	06/15/06
Throughout Tx	Alpha-Neutronics Inc	L05784	Houston	03	06/21/06
Throughout Tx	Metco	L03018	Houston	159	06/14/06
Throughout Tx	Metco	L03018	Houston	160	06/20/06
Throughout Tx	Protechnics	L03835	Houston	49	06/14/06
Throughout Tx	Radiographic Specialists Inc	L02742	Houston	50	06/15/06
Throughout Tx	Headwaters Resources Inc	L05281	Jewett	02	06/15/06
Throughout Tx	Headwaters Resources Inc	L05281	Jewett	02	06/21/06
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	223	06/29/06
Throughout Tx	PMI Specialist Inc	L04686	Liberty	13	06/23/06
Throughout Tx	Hi-Tech Testing Service Inc	L05021	Longview	59	06/21/06
Throughout Tx	Enertech Wireline Services LP	L05738	Midland	08	06/14/06
Throughout Tx	Big State X-Ray	L02693	Odessa	52	06/15/06
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	53	06/21/06
Throughout Tx	Desert Industrial X-Ray LP (Correct an Error)	L04590	Odessa	53	06/21/06
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	111	06/15/06
Throughout Tx	Fugro Consultants LP	L04322	Pasadena	82	06/16/06
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	04	06/13/06
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	65	06/27/06
Throughout Tx	Midwest Inspection Services	L03120	Perryton	91	06/29/06
Throughout Tx	United Surveys Inc	L01570	Rosenberg	21	06/16/06
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	43	06/27/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Greenville	Hunt Memorial Hospital District DBA Presbyterian Hospital of Greenville	L01695	Greenville	33	06/15/06
McAllen	Harish Koolwal MD PA Valley Heart Center	L05149	McAllen	10	06/14/06
Vernon	Wilbarger General Hospital	L03047	Vernon	17	06/16/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Carrollton	Stmicroelectronics Inc	L03930	Carrollton	21	06/21/06
New Braunfels	Cancer Care Network of South Texas PA DBA Hematology Oncology Associates of South Texas	L05648	New Braunfels	01	06/28/06
Victoria	Citizens Medical Center	L01544	Victoria	22	06/16/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200603683
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 11, 2006

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Notice of Agreed Orders

Notice is hereby given that the Department of State Health has entered Agreed Orders with the following registrants:

Sullivan-Schein Dental Products (Registration Number R18006) of Melville, NY. A total penalty of $15,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Ray Partha, dba Trilogy Medical Services (unregistered) of Houston. A total penalty of $10,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Gary L. Geaccone, DDS, dba The Dental Group. (Registration Number R17873) of League City. A total penalty of $1,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Patterson Dental Supply Company (Registration Number R06728) of Houston. A total penalty of $30,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

Calixto J. Ruibal, P.A., dba Lawndale Medical Clinic (Registration Number R14067) of Houston. A total penalty of $3,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200603694
Cathy Campbell
General Counsel
Department of State Health Services
Filed: July 12, 2006

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Refunding Bonds (Meadowlands Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Harris County Public Library - Northwest Branch, 11355 Regency Green Drive, Cypress, Harris County, Texas 77429, at 6:00 p.m. on August 9, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $13,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to H.T. Seattle Slew, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 236-unit multifamily residential rental development located at approximately the northwest corner of Steeplepark Drive and Steepleway Boulevard, Harris County, Texas. A physical address has not been assigned by the City of Houston. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200603674
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 11, 2006

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Multifamily Housing Revenue Refunding Bonds (Rolling Creek Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Crowne Plaza Hotel, 12801 Northwest Freeway, Houston, Harris County, Texas 77040, in the Plaza Room, at 6:00 p.m. on August 7, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Rolling Creek Apartments, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located at 8038 Gatehouse Drive, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200603675
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 11, 2006

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Texas Department of Insurance

Company Licensing

Application to change the name of MID AMERICA LIFE INSURANCE COMPANY to AMERICA REPUBLIC CORP INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Omaha, Nebraska.

Application to change the name of TEXAS HEALTHSPRING I, LLC to TEXAS HEALTHSPRING, LLC, a domestic health maintenance organization (HMO). The home office is in Houston, Texas.

Application for incorporation to the State of Texas by TEXAS FARM BUREAU CASUALTY INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Waco, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200603707
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 12, 2006

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Notice of Public Hearing

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2643 on August 22, 2006 at 10:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, in Austin, Texas, to consider a petition by the Texas Windstorm Insurance Association (TWIA) requesting approval of a reinsurance program to operate in concert with the catastrophe reserve trust fund established under the Insurance Code, Article 21.49 §8(i). Article 21.49, §8(h)(17) provides that, with the approval of the Texas Department of Insurance, TWIA may establish a reinsurance program that operates in addition to or in concert with the catastrophe reserve trust fund. The new program is proposed to be effective as of June 1, 2006.

The hearing is held pursuant to the Insurance Code, Article 21.49 §5A, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Texas Windstorm Insurance Association Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear to testify for or against the proposed reinsurance program.

Copies of the TWIA petition and proposed reinsurance agreement are available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies of the petition and the proposed reinsurance agreement, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0606-10).

TRD-200603640
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 7, 2006

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of MEMORIAL ADMINISTRATORS, LLC, a domestic third party administrator. The home office is AUSTIN, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200603706
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 12, 2006

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Joint Financial Regulatory Agencies

Notice of Public Meeting

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly re-propose §153.22, relating to home equity lending under Texas Constitution, Article XVI, Section 50(a)(6). A prior proposed §153.22, published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1393), is withdrawn in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5601). Existing §153.22 is re-proposed for repeal.

The Credit Union Commissioner and the Consumer Credit Commissioner have been delegated the authority to conduct a public meeting on behalf of the commissions for the purpose of receiving oral comments, views, and/or testimony concerning the proposed interpretation. A public meeting will be held in Austin on July 27, 2006, at 2:00 p.m. in the State Finance Commission Building, William F. Aldridge Hearing Room, located at 2601 North Lamar Boulevard. To be considered, an oral comment must be received at this public meeting; at the conclusion of the meeting, no further oral comments will be considered or accepted by the commissions.

Persons with disabilities who are planning to attend the meeting and have special communication or other accommodation needs should contact Joann McAnally at the Office of Consumer Credit Commissioner at (512) 936-7640. Requests should be made as far in advance of the meeting as possible.

TRD-200603638
Leslie L. Pettijohn
Commissioner
Joint Financial Regulatory Agencies
Filed: July 7, 2006

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 663 "Super Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 663 is "SUPER BINGO". The play style is "bingo with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 663 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 663.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, 1X, 2X, 3X and 5X.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 663 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
FREE	

G46	
G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
G60	
O61	
O62	
O63	
O64	
O65	
O66	
O67	
O68	
O69	
O70	
O71	
O72	
O73	
O74	
O75	
1X	PRIZE
2X	PRIZE
3X	PRIZE
5X	PRIZE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 663 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅ which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $2,000, $5,000, $20,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (663), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 663-0000001-001.

L. Pack - A pack of "SUPER BINGO" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPER BINGO" Instant Game No. 663 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPER BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 181 (one hundred eighty-one) Play Symbols. The player must scratch off the CALLER'S CARD area to reveal twenty-four (24) Bingo Numbers and six (6) Bonus Numbers. The player must scratch all the Bingo Numbers on Cards 1 through 6 that match the Bingo Numbers and Bonus Numbers on the Caller's Card. Each card has a corresponding prize legend. Players win by matching those same numbers on the six (6) Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an "X" pattern, the player wins a prize according to the legend of the respective Player's Card. Examples of play: If a player matches all bingo numbers plus the Free space in a complete horizontal, vertical, or diagonal line pattern in any one card the player wins the prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card the player wins the prize according to the legend of the respective playing card. If the player matches all bingo numbers plus the Free Space to make a complete "X" pattern in any one card the player wins the prize according to the legend of the respective playing card. The player scratches the PRIZE MULTIPLIER area for a chance to win 2X, 3X, or 5X the prize won. The player can win up to six times on any ticket but only once on each "card". No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 181 (one hundred eighty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 181 (one hundred eighty-one). Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 181 (one hundred eighty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 181 (one hundred eighty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers

must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical patterns.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to six times.

D. There will never be more than one win on a single Player's Card.

E. The highest prize won per card will be paid.

F. No duplicate numbers will appear on the CALLER'S CARD.

G. No duplicate numbers will appear on each individual Player's Card.

H. The number range used for each letter will be as follows: B: 01-15, I: 16-30, N: 31-45, G: 46-60, O: 61-75.

I. Each Player's Card on the same ticket must be unique.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPER BINGO" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPER BINGO" Instant Game prize of $1,000, $2,000, $5,000, $20,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPER BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SUPER BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SUPER BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 663. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 663 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	800,000	7.50
$10	400,000	15.00
$15	240,000	25.00
$20	80,000	75.00
$25	54,000	111.11
$30	30,000	200.00
$40	17,500	342.86
$50	21,000	285.71
$75	10,500	571.43
$100	5,000	1,200.00
$200	3,750	1,600.00
$500	1,500	4,000.00
$1,000	20	300,000.00
$2,000	10	600,000.00
$5,000	12	500,000.00
$20,000	5	1,200,000.00
$50,000	4	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 663 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 663, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603672

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 11, 2006

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Instant Game Number 691 "Star of Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 691 is "STAR OF TEXAS". The play style for Game 1 is ”match 3 of 6”. The play style for Game 2 is ”beat score”. The play style for Game 3 is ”key number match with auto win”. The play style for Game 4 is ”three in a line”. The play style for Game 5 is ”match 3 of 6”. The play style for Game 6 is ”add up”.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 691 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 691.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, BEEF SYMBOL, STEER SYMBOL, BRANDING IRON SYMBOL, SADDLE SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, $5.00, $10.00, $25.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 691 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
STACK OF BILLS	BILLS
DOLLAR SIGN SYMBOL	MONEY
STAR SYMBOL	STAR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
BEEF SYMBOL	BEEF
STEER SYMBOL	STEER
BRANDING IRON SYMBOL	BRAND
SADDLE SYMBOL	SADDLE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 691 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (691), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 691-0000001-001.

L. Pack - A pack of "STAR OF TEXAS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "STAR OF TEXAS" Instant Game No. 691 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "STAR OF TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 36 (thirty-six) Play Symbols. GAME 1: If a player reveals three (3) matching amounts, the player wins that amount. GAME 2: If YOUR number play symbol beats THEIR number play symbol in any one row across, the player wins the PRIZE for that row. GAME 3: If a player matches any of YOUR NUMBERS play symbols to the LUCKY NUMBER play symbol, the player wins the PRIZE shown. If a player reveals a "boot" symbol, the player wins that PRIZE instantly. GAME 4: If a player reveals three (3) "hat" symbols in the same row, column or diagonal, the player wins the PRIZE shown. GAME 5: If a player reveals three (3) matching play symbols, the player wins PRIZE shown. GAME 6: If a player reveals two (2) numbers that add up to exactly ten (10), the player wins $10. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 36 (thirty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 36 (thirty-six) Play Symbols under the latex overprint on the front portion

of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 36 (thirty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 36 (thirty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. GAME 1: No more than three matching amounts.

C. GAME 2: No duplicate non-winning YOUR number play symbols.

D. GAME 2: No duplicate non-winning THEIR number play symbols.

E. GAME 2: No duplicate non-winning prize symbols.

F. GAME 2: No ties within a row.

G. GAME 3: Non-winning prize symbols will never be the same as the winning prize symbol.

H. GAME 3: No duplicate non-winning prize symbols.

I. GAME 3: No duplicate non-winning YOUR NUMBERS play symbols.

J. GAME 3: No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and $5).

K. GAME 4: No more than one occurrence of three "hat" symbols in a row, column or diagonal on a ticket.

L. GAME 4: There will be a predominance of $50 and higher prize symbols.

M. GAME 4: Games will contain 4 "hat" and 5 "horseshoe" symbols or 5 "hat" and 4 "horseshoe" symbols.

N. GAME 4: There will never be 3 "horseshoe" symbols in the same row, column or diagonal.

O. GAME 5: This game may only win once.

P. GAME 6: The sum of the 2 numbers will never total less than 4 or more than 15.

2.3 Procedure for Claiming Prizes.

A. To claim a "STAR OF TEXAS" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "STAR OF TEXAS" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "STAR OF TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "STAR OF TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "STAR OF TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 691. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 691 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	840,000	6.00
$10	319,200	15.79
$15	201,600	25.00
$20	100,800	50.00
$25	67,200	75.00
$50	32,550	154.84
$100	6,804	740.74
$200	150	33,600.00
$500	140	36,000.00
$1,000	100	50,400.00
$5,000	20	252,000.00
$50,000	8	630,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.21. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 691 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 691, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603711
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 12, 2006

♦ ♦ ♦

Instant Game Number 692 "In The Chips"

1.0 Name and Style of Game.

A. The name of Instant Game No. 692 is "IN THE CHIPS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 692 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 692.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: ONE CHIP SYMBOL, TWO CHIP SYMBOL, THREE CHIP SYMBOL, FOUR CHIP SYMBOL, FIVE CHIP SYMBOL, SIX CHIP SYMBOL, SEVEN CHIP SYMBOL, EIGHT CHIP SYMBOL, NINE CHIP SYMBOL, TEN CHIP SYMBOL, ELEVEN CHIP SYMBOL, TWELVE CHIP SYMBOL, THIRTEEN CHIP SYMBOL, FOURTEEN CHIP SYMBOL, FIFTEEN CHIP SYMBOL, SIXTEEN CHIP SYMBOL, SEVENTEEN CHIP SYMBOL, EIGHTEEN CHIP SYMBOL, NINETEEN CHIP SYMBOL, TWENTY CHIP SYMBOL, MONEY BAG SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $30.00, $50.00, $100, $1,000, $5,000 or $25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 692 - 1.2D

PLAY SYMBOL	CAPTION
ONE CHIP SYMBOL	ONE
TWO CHIP SYMBOL	TWO
THREE CHIP SYMBOL	THR
FOUR CHIP SYMBOL	FOR
FIVE CHIP SYMBOL	FIV
SIX CHIP SYMBOL	SIX
SEVEN CHIP SYMBOL	SVN
EIGHT CHIP SYMBOL	EGT
NINE CHIP SYMBOL	NIN
TEN CHIP SYMBOL	TEN
ELEVEN CHIP SYMBOL	ELV
TWELVE CHIP SYMBOL	TLV
THIRTEEN CHIP SYMBOL	TRN
FOURTEEN CHIP SYMBOL	FTN
FIFTEEN CHIP SYMBOL	FFN
SIXTEEN CHIP SYMBOL	SXN
SEVENTEEN CHIP SYMBOL	SVT
EIGHTEEN CHIP SYMBOL	ETN
NINETEEN CHIP SYMBOL	NTN
TWENTY CHIP SYMBOL	TWY
MONEY BAG SYMBOL	AUTO
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$5,000	FIV THOU
$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 692 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $100.

I. High-Tier Prize - A prize of $1,000, $5,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (692), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 692-0000001-001.

L. Pack - A pack of "IN THE CHIPS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "IN THE CHIPS" Instant Game No. 692 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "IN THE CHIPS" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR CHIPS play symbols to either WINNING CHIP play symbol, the player wins the PRIZE shown for that chip. If a player reveals a "moneybag" play symbol, the player wins that PRIZE instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No three or more matching non-winning prize symbols on a ticket.

B. Consecutive non-winning tickets will not have identical play data, spot for spot.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. No duplicate non-winning prize symbols on a ticket.

E. The "moneybag" symbol will never appear more than once on a ticket.

F. No duplicate WINNING CHIP play symbols on a ticket.

G. No duplicate YOUR CHIP play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "IN THE CHIPS" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "IN THE CHIPS" Instant Game prize of $1,000, $5,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "IN THE CHIPS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "IN THE CHIPS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "IN THE CHIPS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 692. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 692 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	762,000	7.87
$4	414,000	14.49
$5	72,000	83.33
$10	144,000	41.67
$20	24,000	250.00
$50	24,000	250.00
$100	7,750	774.19
$1,000	40	150,000.00
$5,000	15	400,000.00
$25,000	10	600,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.14. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 692 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 692, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603673

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 11, 2006

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Instant Game Number 694 "Double Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 694 is "DOUBLE DOUBLER". The play style is "match 3 of 6 with 2X and 4X".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 694 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 694.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $5.00, $10.00, $20.00, $40.00, $100, $1,000, SINGLE SYMBOL, DOUBLE SYMBOL or DOUBLE DOUBLER SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 694 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU
SINGLE SYMBOL	1XPRIZE
DOUBLE SYMBOL	2XPRIZE
DOUBLE DOUBLER SYMBOL	4XPRIZE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 694 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $80.00, $100, $200 or $400.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (694), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 694-0000001-001.

L. Pack - A pack of "DOUBLE DOUBLER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the

last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DOUBLE DOUBLER" Instant Game No. 694 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DOUBLE DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 7 (seven) Play Symbols. If a player reveals 3 (three) matching amounts, the player wins that amount. Scratch YOUR PRIZE LEVEL box for a chance to win Double or even 4 (four) times your prize. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 7 (seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 7 (seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 7 (seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 7 (seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more matching symbols on a ticket.

C. No three pairs on a ticket.

D. No non-winning ticket will ever contain one or more pairs of match 3 play symbols with the DOUBLE PRIZE or DOUBLE DOUBLER play symbol in the YOUR PRIZE LEVEL box.

2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE DOUBLER" Instant Game prize of $1.00, $2.00, $4.00, $10.00, $20.00, $40.00, $80.00, $100, $200 or $400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00, $80.00, $100, $200 or $400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DOUBLE DOUBLER" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the

Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DOUBLE DOUBLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DOUBLE DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "DOUBLE DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 694. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 694 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,536,000	7.81
$2	624,000	19.23
$4	240,000	50.00
$10	96,000	125.00
$20	60,000	200.00
$40	7,500	1,600.00
$80	5,000	2,400.00
$100	1,500	8,000.00
$200	700	17,142.86
$400	250	48,000.00
$1,000	200	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.67. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 694 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 694, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200603637
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 7, 2006

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North Central Texas Council of Governments

Benchmarking Contract

The North Central Texas Council of Governments (NCTCOG) signed a contract with R. W. Beck, effective June 27, 2006, for the Regional Residential and Commercial Recycling Rate Benchmarking Study. The contract amount is $95,000.00. Any questions regarding this project should be directed to Patricia D. B. Redfearn, Ph.D., in NCTCOG's Environment and Development Department, at (817) 608-2360, or predfearn@nctcog.org.

TRD-200603703
Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: July 12, 2006

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North Texas Tollway Authority

Notice of Intent for Teaming Services on SH 121 (Collin and Denton Counties, Texas)

INTRODUCTION

The NTTA:

The North Texas Tollway Authority (the "NTTA") is a regional tollway authority and political subdivision of the State of Texas, existing and operating under Chapter 366 of the Texas Transportation Code. It is authorized to acquire, design, finance, construct, maintain, repair and operate turnpike projects in Collin, Dallas, Denton and Tarrant Counties in the North Texas region, United States.

The NTTA has built and operates the Dallas North Tollway System, consisting of the Dallas North Tollway, the President George Bush Turnpike, the Addison Airport Toll Tunnel and the Mountain Creek Lake Bridge. The Dallas North Tollway System averages over a million toll transactions a day.

The NTTA has raised capital to design and construct its turnpike projects through the issuance of tax-exempt revenue bonds; it receives no direct tax funding. With significant reserves and debt service coverage levels, the system has earned a credit rating of A+/A1.

Additional information regarding the NTTA, including the 2005 Annual Report, can be obtained at its website: www.ntta.org.

The Project:

Last summer, Skanska BOT made an unsolicited proposal to the Texas Department of Transportation ("TxDOT") to execute a Comprehensive Development Agreement ("CDA") to finance, construct, operate and maintain SH 121 in Denton and Collin Counties as a toll road. Segments of SH 121 from near DFW Airport in Denton County to Hillcrest Road in Collin County are being constructed by TxDOT with state highway funds, while the selected developer would be required to construct the SH 121 main lanes from Hillcrest to US 75, together with intersections at the Dallas North Tollway and at US 75 ("SH 121").

Subsequently, TxDOT sought competing proposals from other interested firms, and short-listed these four firms to compete for this CDA:

• Skanska BOT (Granite Construction, Morgan Stanley)

• Macquarie Infrastructure (Gilbert/Abrams, Kiewit)

• Cintra (Ferrovial Agroman)

• Pioneer Heritage Partners (Transurban, Fluor, Parsons, Balfour Beatty)

Over the last six months, the NTTA has been in discussions with TxDOT concerning whether NTTA would participate as a member of any of the CDA teams, or whether the NTTA would submit a competing proposal. The Regional Transportation Council requested that the NTTA submit a competing proposal at their April Meeting.

At a Special Called Meeting in May, the NTTA Board elected not to provide services to the CDA proposers, thereby reserving the right under its Memorandum of Understanding with TxDOT to develop SH 121 on some other basis. At its Regular Meeting on June 21, the NTTA Board followed up its previous action by authorizing and instructing its staff to prepare a proposal to TxDOT and the Regional Transportation Council for the NTTA to design, finance, construct, maintain and operate SH 121 for a period of 50 years.

In response to the NTTA's decision, TxDOT advised the four short-listed proposers that the NTTA "has stated its intent to submit a formal request to TxDOT to allow NTTA to deliver, operate and maintain the Project." TxDOT also formulated a process that TxDOT will follow in comparing the NTTA submittal and the apparent best-value CDA proposal. The NTTA's submittal and the CDA proposals are due on November 30, 2006.

THE TEAMING SERVICES

The RFQ:

The NTTA currently intends to issue on or after July 19, 2006 a Request for Qualifications for Teaming Services on SH 121 (the "RFQ"). The anticipated due date for the responses to the RFQ is August 2, 2006, with interviews with the highest-ranked respondent(s) to follow shortly thereafter.

By issuing this NOI the NTTA is in no manner obligating itself to issue the RFQ and, if an RFQ is issued, the NTTA explicitly reserves the right to modify in that RFQ any of the terms or dates stated in this NOI.

The NTTA's Goals and Requests:

The NTTA intends to utilize the RFQ to identify and retain a single entity (that may subcontract subsequently with other entities) with suitable public/private partnership ("P3") experience and capabilities to complement the NTTA's core competencies. The NTTA anticipates that, due to time constraints and other factors, the initial relationship with the selected entity (the "Selected Respondent") will be similar to a consulting relationship. However, the NTTA currently expects and desires for the parties to diligently evaluate and advance the possibility of the relationship becoming more of a partner/team member relationship in accordance with the NTTA's enabling legislation and a Public/Private Partnership Policy which is being formulated, and is anticipated to be presented to its Board of Directors at its July 19th meeting.

The primary capabilities sought by the NTTA from the Selected Respondent include:

• Design-Build Capabilities and Innovative Contracting Methods: The NTTA is seeking a team member with substantial in-house design/build expertise and capabilities, with a corresponding track record of implementing innovative approaches to complex road projects. Emphasis will be placed on demonstrated experience of design/build activities within the context of projects awarded under concession agreements with public authorities responsible for transportation. It will also be important to demonstrate experience and capacity (both technical and financial) to perform successfully under turn- key, fixed price design/build contract arrangements for projects of similar size and complexity to SH 121.

• Lifecycle Maintenance: There may also be opportunities for the Selected Respondent to be involved in the provision of lifecycle maintenance on the project assets. Consequently, the NTTA will expect to work with the team member to conduct a thorough examination of whole-life costing approaches.

• Bid Formulation and Execution: The NTTA is seeking a team member with a track record of successfully leading "consortiums" bidding on P3 projects. Emphasis will be placed on experience with projects involving real toll revenue risks and/or projects awarded primarily on the basis of the up-front payment to the sponsoring governmental authority. The NTTA will seek to assure itself that the team member possesses a number of core competencies, including: (a) the ability to assist in identifying successful bidding strategies and tactics; (b) the capacity to dedicate qualified bid team resources to the project; (c) the ability to craft and deliver comprehensive P3 bid proposals; (d) experience with P3 project risk analysis and allocation; (e) experience with a wide variety of financing approaches for P3 projects; and (f) experience with contract negotiation (both at the concession agreement level and for key subcontracts) through to successful execution.

• Equity Finance for P3 Projects and Financial Substance: The NTTA is evaluating the utilization of innovative financing mechanisms, including the use of private sector equity, in order to optimize its SH 121 submittal. The NTTA will seek to understand the degree to which a potential team member has in-house sources of equity for P3 projects, and a demonstrated track record of employing such resources in P3 projects of similar size and complexity to SH 121. In addition, the potential team member will need to demonstrate a threshold level of financial substance - including measures of capitalization, liquidity and funding capacity to be defined in the RFQ.

Request the RFQ:

If you are interested in receiving a copy of the RFQ if and when it is issued, please email your firm's name and its preferred contact information to rfranklin@ntta.org. Please do not transmit any questions or requests insofar as they will not receive a response.

SH 121 Proposers and Team Members:

Please note that pursuant to TxDOT's conflict of interest policies, the NTTA cannot entertain expressions of interest from the four proposers short-listed by TxDOT for SH 121 or from their team members.

TRD-200603721
Nancy Greer
Assistant Secretary, Board of Directors
North Texas Tollway Authority
Filed: July 12, 2006

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Texas Parks and Wildlife Department

Notice of Acceptance of Conservation Easement

9,470 Acres Adjacent to Black Gap Wildlife Management Area

Brewster County

In a meeting on August 24, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider accepting the donation of a conservation easement on approximately 9,470 acres adjacent to the Black Gap WMA in Brewster County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may be submitted to Ted Hollingsworth, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email at ted.hollingsworth@tpwd.state.tx.us, or in person at the meeting.

TRD-200603678
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: July 11, 2006

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Notice of Land Donation

Black Gap Wildlife Management Area

Brewster County

In a meeting on August 24, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the acceptance of a donation of five inholding tracts totaling approximately 1,340 acres within the Black Gap WMA in Brewster County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may be submitted to Ted Hollingsworth, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email at ted.hollingsworth@tpwd.state.tx.us, or in person at the meeting.

TRD-200603677
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: July 11, 2006

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Notice of Oil and Gas Lease Nomination

Lockhart State Park

Caldwell County

In a meeting on August 24, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider a proposal that a recommendation be forwarded to the Board for Lease at the General Land Office (GLO) to accept the nomination of mineral rights on Lockhart State Park in Caldwell County for an oil and gas lease. The proposed recommendation will request off site drilling only and no occupancy of the surface of the park. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action on this matter, the Commission will take public comment regarding the proposed recommendation. Public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email at corky.kuhlmann@tpwd.state.tx.us, or in person at the meeting.

TRD-200603676
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: July 11, 2006

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Texas Board of Professional Land Surveying

Correction of Error

The Texas Board of Professional Land Surveying proposed an amendment to 22 TAC §663.17 in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5540). The first sentence of subsection (e) contained an error. The words "contain more than 20 lots and" should not have been included.

The first sentence of §663.17(e) should read as follows.

"(e) Subdivisions that require infrastructure construction must have exterior corner monumentation set prior to plat recordation. . . ."

TRD-200603704

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Public Utility Commission of Texas

Notice of Application for Amendment to Certificate of Convenience and Necessity for Name Change

Notice is given to the public of an application filed on July 6, 2006, with the Public Utility Commission of Texas, for an amendment to a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Texas ALLTEL, Inc. for an Amendment to its Certificate of Convenience and Necessity for Name Change. Docket Number 32910.

The Application: Texas ALLTEL, Inc. (ALLTEL or the Applicant) filed an application for an amendment to its Certificate of Convenience and Necessity (CCN) Number 40080 for name change only. Applicant stated that Texas ALLTEL's parent company, Alltel Corporation is spinning off its wireline operations and merging them with Valor Communications Group, Inc. This merger transaction will close upon receipt of regulatory approvals, expected by July 17, 2006. The name of the new parent corporation is Windstream Corporation. ALLTEL seeks to change its name from Texas ALLTEL, Inc., to Windstream Texas, Inc. to reflect the new ownership and affiliation with Windstream Corporation.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by July 28, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32910.

TRD-200603666
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 2006

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Notice of Application for Amendment to Certificate of Convenience and Necessity for Name Change

Notice is given to the public of an application filed on July 6, 2006, with the Public Utility Commission of Texas (commission), for an amendment to a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Sugar Land Telephone Company for an Amendment to its Certificate of Convenience and Necessity for Name Change. Docket Number 32911.

The Application: Sugar Land Telephone Company (Sugar Land or the Applicant) filed an application for an amendment to its Certificate of Convenience and Necessity (CCN) Number 40062 for name change only. Applicant stated that Sugar Land's parent company, Alltel Corporation is spinning off its wireline operations and merging them with Valor Communications Group, Inc. This merger transaction will close upon receipt of regulatory approvals, expected by July 17, 2006. The name of the new parent corporation is Windstream Corporation. Sugar Land seeks to change its name from Sugar Land Telephone Company to Windstream Sugar Land, Inc. to reflect the new ownership and affiliation with Windstream Corporation.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by July 28, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32911.

TRD-200603667
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 2006

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 30, 2006, NOS Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60022. Applicant intends to reflect a change in ownership/control.

The Application: Application of NOS Communications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32891.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 26, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32891.

TRD-200603662
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 2006

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Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Denton County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 6, 2006, for a certificate of convenience and necessity for a proposed transmission line in Denton County, Texas

Docket Style and Number: Application of Brazos Electric Power Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Denton County, Texas. Docket Number 32871.

The Application: The project is designated the Mustang Transmission Line Project. Brazos Electric Power Cooperative, Inc. (Brazos Electric) stated that the proposed transmission line is needed due to address load growth and potential load growth north of Highway 380 and west of the proposed Dallas North Tollway. The miles of right-of-way for this project will be approximately 8.0 miles. The estimated date to energize facilities is January 2008.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The current deadline for intervention in this proceeding is August 21, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32871.

TRD-200603688
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 11, 2006

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Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Henderson and Van Zandt Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 7, 2006, for a certificate of convenience and necessity for a proposed transmission line in Henderson and Van Zandt Counties, Texas.

Docket Style and Number: Application of Rayburn Country Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Henderson and Van Zandt Counties, Texas. Docket Number 32707.

The Application: The application of Rayburn Country Electric Cooperative, Inc. (RCEC) for a proposed transmission line is designated the RCEC 138-kV Interconnect Project. RCEC stated that the proposed transmission line is needed to address reliability problems on the RCEC Loop and provide additional transfer capability to serve the growing area. The miles of right-of-way for this project will be approximately 10.7 miles (preferred route). The estimated date to energize facilities is August 2008.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is August 21, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512)

936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32707.

TRD-200603687
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 11, 2006

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Notice of Application to Amend Certificated Service Area Boundaries in Deaf Smith and Oldham Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on July 3, 2006, for an amendment to certificated service area boundaries within Deaf Smith and Oldham Counties, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Service Area Exception within Deaf Smith and Oldham Counties. Docket Number 32901.

The Application: Deaf Smith Electric Cooperative, Inc. (DSEC) filed an application for a service area exception to amend certificated service area boundaries within Deaf Smith and Oldham Counties. DSEC seeks to provide service to a specific customer located within the certificated service area of Xcel Energy.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 28, 2006 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32901.

TRD-200603665
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 2006

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries in Moore County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on July 6, 2006, for an amendment to certificated service area boundaries within Moore County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company, an Excel Energy Company, for a Certificate of Convenience and Necessity for Service Area Exception within Moore County. Docket Number 32914.

The Application: Southwestern Public Service Company (SPS) seeks to provide service to a specific customer located within the certificated service area of Rita Blanca Electric Cooperative, Inc. (RBEC). The customer has requested service from SPS. RBEC is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 28, 2006 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32914.

TRD-200603668
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 2006

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 20, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on July 10, 2006.

Docket Title and Number: Application of CenturyTel of Port Aransas, Inc. for Approval of LRIC Study for a Promotion of Caller ID Plus Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 32894.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 32894. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 32894.

TRD-200603661
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 2006

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 20, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on July 10, 2006.

Docket Title and Number: Application of CenturyTel of San Marcos, Inc. for Approval of LRIC Study for a Promotion of Caller ID Plus Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 32895.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 32895. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll

free 1-800-735-2989. All comments should reference Docket Number 32895.

TRD-200603663
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 2006

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 20, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on July 10, 2006.

Docket Title and Number: Application of CenturyTel of Lake Dallas, Inc. for Approval of LRIC Study for a Promotion of Caller ID Plus Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 32896.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 32896. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 32896.

TRD-200603664
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 10, 2006

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Texas Residential Construction Commission

Notice of Applications for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Hayley Builders, Inc., 7257 Up River Road, Corpus Christi, Texas 78409. Hayley Builders, Inc., holds TRCC builder registration #2202. The applicant's registered agent is Richard Hayley.

Garvey Homes, Ltd., 2712 King Arthur Boulevard, Lewisville, Texas 75056. Garvey Homes, Ltd., holds TRCC builder registration #6542. The applicant's registered agent is Robert Hansen.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200603695
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: July 12, 2006

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Stephen F. Austin State University

Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal to the University's contract with LCS Development Group, 115 N. University Dr., Suite F, Nacogdoches, TX 75964. The original contract was in the sum of $35,000 with three subsequent renewals in the amount of $10,000. The original contract award was published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5947). The first renewal was published in the October 5, 2001, issue of the *Texas Register* (26 TexReg 7663), the second renewal was published in the September 6, 2002, issue of the *Texas Register* (27 TexReg 8355), the third renewal was published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5001), the fourth renewal was published in the August 13, 2004, issue of the *Texas Register* (29 TexReg 7813), and the fifth renewal was published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3913). The contract will be renewed in an additional sum not to exceed $10,000 for the period September 1, 2006 through August 31, 2007.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on an as-needed basis.

For further information, please call (936) 468-2206.

TRD-200603615
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: July 5, 2006

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Notice of Consultant Contract Renewal

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of renewal of the University's contract with consultant Patrick Odell, 3200 Windsor, Waco, TX 76708. The original contract was in the sum of $6,156.00 plus expenses. The first renewal was published in the December 19, 2003, issue of the *Texas Register* (28

TexReg 11433). The contract will be renewed in an additional sum not to exceed $3,000.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant. Services are provided on an as-needed basis.

For further information, please call Dr. Jasper Adams at (936) 468-3805.

TRD-200603616
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: July 5, 2006

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Lago Vista, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Lago Vista, Rusty Allen Airport. TxDOT CSJ No. 0614LAGOV. Scope: Provide engineering/design services to rehabilitate and mark Runway 15-33; rehabilitate taxiways and apron; complete eastside taxiway and demo cross taxiways; signage for eastside parallel taxiway; taxiway marking with centerline and edge reflectors; pave grass area southeast of fuel system; supplemental wind cone at Runway 15; and feasibility study of 10-foot security fencing at the Rusty Allen Airport.

The DBE goal is set at 0%. TxDOT Project Manager is Harry Lorton, P.E.

To assist in your proposal preparation, the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Rusty Allen Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/forms/aviation/550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than August 15, 2006, 4:00 p.m. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The Consultant Selection Committee (committee) will be composed of TxDOT Aviation Division staff members and one local government member. The committee will review all proposals and rate and rank each. The final selection by the committee will generally be made following the completion of review of proposals. The criteria for evaluating engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top-rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews with the top-rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Harry Lorton, Project Manager for technical questions, at 1-800-68-PILOT (74568).

TRD-200603636
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 7, 2006

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: **http://www.dot.state.tx.us**. Click on Aviation, then click on Aviation Public Hearing; or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68-PILOT.

TRD-200603635
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 7, 2006

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Caney Creek Municipal Utility District, 8108 Highway 457, Sargent, Texas 77414, received December 2, 2005, application for financial assistance in the amount of $915,000 from the Texas Water Development Funds.

Kempner Water Supply Corporation, P.O. Box 103, Kempner, Texas 76539, received June 2, 2006, application for financial assistance in the total amount of $33,000,000 from the Rural Water Assistance Fund and the Texas Water Development Funds.

Possum Kingdom Water Supply Corporation, 1170 Willow Road, Graford, Texas 76449, received May 30, 2006, application for financial assistance in the amount of $1,625,000 from the Drinking Water State Revolving Fund.

Wharton County, 309 East Milam, Wharton, Texas 77488, received February 1, 2006, application for financial assistance in the amount of $4,265,000 from the Texas Water Development Funds.

Laguna Madre Water District, 105 Port Road, Port Isabel, Texas 78578, received February 23, 2006, application for financial assistance in an amount not to exceed $400,000 from the Research and Planning Fund.

Grand Prairie, City of, P. O. Box 534045, Grand Prairie, Texas 75053, received March 15, 2006, application for financial assistance in an amount not to exceed $49,906.75 from Flood Mitigation Assistance Planning Grant.

Jefferson County Waterway and Navigational District, 2348 Highway 69 North, Nederland, Texas 77627, received May 11, 2006, application for financial assistance in an amount not to exceed $37,500 from Flood Mitigation Assistance Planning Grant.

Energy Laboratories, Inc., P. O. Box 3258, 2393 Salt Creek Highway, Casper, Wyoming 82602, received July 22, 2005, application for financial assistance in an amount not to exceed $384,000 from the Research and Planning Fund.

TRD-200603720
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: July 12, 2006

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).